

# EXHIBIT 21

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, CRIMINAL ACTION NUMBER:  
vs. 2:19-cr-00120-KM  
GORDON J. COBURN and *Garrity Motion*  
STEVEN SCHWARTZ, Volume 1 Pages 1-266  
Defendants.

MARTIN LUTHER KING BUILDING & U.S. COURTHOUSE  
50 Walnut Street, Newark, New Jersey 07101  
April 18, 2023  
Commencing at 9:05 a.m.

**B E F O R E:** THE HONORABLE KEVIN McNULTY  
UNITED STATES DISTRICT JUDGE

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1 (PROCEEDINGS held in open court, before The Honorable  
2 Kevin McNulty, United States District Judge, at 9:05 a.m.)

3 THE COURTROOM DEPUTY: All rise.

4 THE COURT: Good morning, everyone.

5 I mean everyone. Be seated.

6 We are here for a hearing which everyone has, if not  
7 entirely accurately, been calling a *Garrity* hearing for short  
8 and -- in the case of United States v. Gordon Coburn and Steven  
9 Schwartz, Civil Docket Number 19-120.

10 All right. I take it everyone has entered their  
11 appearances.

12 MR. LUSTBERG: Yes, Your Honor.

13 THE COURT: Yes. Let's not occupy the morning with  
14 that.

15 Tell me, we are going -- to avoid chaos, as in the  
16 past, we're going to have one lawyer per client speaking. If  
17 you want to divide up issues, fine; but one at a time.

18 So at least initially, who will be speaking for each  
19 party here?

20 MR. MOODY: Good morning, Your Honor. Gerald Moody  
21 for the United States.

22 MR. LUSTBERG: Good morning, Judge. Lawrence S.  
23 Lustberg from Gibbons. Mr. Finzi and I have divided up the  
24 witnesses, but -- at least initially --

25 THE COURT: Yeah. One at a time. That's all I'm

1 asking.

2 MR. LUSTBERG: I promise we'll try not to talk over  
3 each other.

4 MR. LEWIN: Good morning, Judge. Nick Lewin for  
5 Mr. Coburn. I will be speaking on his behalf.

6 THE COURT: If I'm not mistaken, we also have counsel  
7 present from Cognizant; is that right?

8 MS. KRAMER: We do, Your Honor. To the extent  
9 there's anything that involves counsel for Cognizant, I will be  
10 the one lodging the objections.

11 THE COURT: We've stuck you in the jury box. Sorry.  
12 But that's all we have room for.

13 I got a letter requesting a five-minute opening  
14 statement. That wouldn't be such a bad idea, just give me a  
15 road map.

16 Who would like -- I'll hear from the defense side  
17 first. Who would like to go?

18 MR. LUSTBERG: Thank you, Your Honor. May it please  
19 the Court.

20 There has, as you well know, been a great deal of ink  
21 spilled and argument offered to the Court with regard to the  
22 subject matter of this hearing for months and even years now  
23 and right up until last night or even this morning.

24 The reason for that is, no matter how much the  
25 government may try to normalize it, this is a truly

1       extraordinary set of facts and demonstrates, in our view,  
2       incredibly graphically the danger of private parties who are  
3       not bound the way the government is to do the right thing and  
4       by the Constitution.

5           Instead, what this is about is when private parties  
6       assume those responsibilities and have a responsibility not to  
7       the public, not to doing what is right, but rather to a company  
8       and its shareholders.

9           Before we start, I would like to step back for just a  
10      minute and talk about what we believe this hearing is about and  
11      what the proofs will show. Cutting through all the briefing  
12      and all the argument, the question to be decided, although  
13      incredibly important, is really pretty simple. It is whether,  
14      on the facts Your Honor is about to hear, Cognizant's actions  
15      are, quote, fairly attributable, unquote, to the government for  
16      Constitutional purposes.

17           That question clearly has a bearing on what has been  
18      called the *Garrity* or *Connolly* issue, whether there are grounds  
19      to suppress statements, statements made by the defendants that  
20      were undisputedly coerced. But the government has not taken  
21      issue -- and as the Court has itself said -- the idea is that  
22      the defendants had no choice but to submit to the interviews at  
23      issue; otherwise, they would be fired.

24           Those statements were made by the defendants to  
25      private counsel engaged by Cognizant who were undertaking an

1 internal investigation that had as its purpose to earn  
2 Cognizant a tremendous benefit from the government, here, a  
3 declination whereby it would never be prosecuted.

4 The hearing that will follow will show that to be the  
5 case and will show that Cognizant was throughout and in a sense  
6 acting exactly as an agent of the government and in  
7 coordination with the government.

8 The issue in this case is one of coerced statements  
9 by a criminal defendant, but the same question is also relevant  
10 to other Constitutional rights like *Brady* that are implicated  
11 when the actions of private actors are deemed fairly  
12 attributable, as I said, to the government.

13 The case law -- and I'm talking here about cases like  
14 *Connolly* itself and *Stein* and *Risha* -- provide a framework for  
15 deciding and defining this question. And it is those -- the  
16 factors from *Connolly*, *Stein*, and *Risha*, which I'm not going to  
17 reiterate -- upon which this hearing focuses.

18 You have extensive briefing on those issues, and I'm  
19 not going to go over them here; but I am going to focus on the  
20 ones just briefly here that I think are most important.

21 First, we intend to focus, Your Honor, as I  
22 mentioned, on the extent to which on the facts on this case  
23 Cognizant's conduct was guided by government policies that  
24 influenced their conduct.

25 We are not saying, as the government has suggested at

1 times, that every time a company cooperates pursuant to a  
2 government policy, the company's conduct is attributable to the  
3 government. That is not our position. Nor of course are we  
4 arguing that the cooperation policies themselves are somehow  
5 per se lawful -- unlawful or wrong or create some agency  
6 relationship between the government and the cooperating company  
7 in every case.

8 But what you will see here today as we proceed goes,  
9 in our view, way, way beyond that. It goes way beyond anything  
10 we have ever seen. And we believe it will go beyond anything  
11 this Court has ever seen. You will see that at each step and  
12 every step of the process for months, weekly, daily, the  
13 government and Cognizant were in constant communication  
14 coordinating the investigation at the pertinent times.

15 Those communications -- and we will see them and hear  
16 them in this hearing -- frankly sound a lot like the way AUSAs  
17 talk to their agents, not the way a government talks to a  
18 company it is investigating and potentially prosecuting.

19 The government, even as it allows Cognizant to  
20 perform an essentially governmental function, directs it  
21 throughout, asks questions, requests information, and provides  
22 instruction. We will show you that. As Judge McMahon put it  
23 in *Connolly*, we believe the proofs will here too show that, for  
24 all intents and purposes, the government's investigation was  
25 Cognizant's investigation.

1                   Let me just give you a couple of examples.

2                   You'll hear that after Cognizant self-reported to the  
3 government on September 1st, 2016, the government completely  
4 and openly handed the investigation over to Cognizant for a  
5 lengthy and critical period. Really, Cognizant's lawyers at  
6 DLA conducted dozens, if not hundreds, of interviews before the  
7 government, nearly six months later, spoke to the first  
8 Cognizant witness for the first time.

9                   It is not just that they waited to speak to the  
10 witnesses; it's that they spoke -- "they," the government --  
11 spoke only to those witnesses in each and every case after  
12 Cognizant had downloaded -- and that's the word that's used --  
13 its counsels' interviews to the government.

14                   The result is that the government, for every single  
15 witness save one IT person, conducted their interviews after  
16 their stories had already been told, often several or even  
17 numerous times, to Cognizant.

18                   Judge McMahon cited exactly the same pattern in  
19 *Connolly*, and she makes the point well. When this happens,  
20 Cognizant's investigation becomes the government's, for it  
21 irretrievably lays the foundation and creates, as she said, a  
22 road map for what the government ultimately does.

23                   This is particularly true with regard to the  
24 statements of defendants, perhaps among others. Thus, you are  
25 going to hear, very explicitly and really with very little

1 mincing of words, that the company specifically held off on  
2 firing Mr. Coburn and Mr. Schwartz in order to get another  
3 crack at interviewing them.

4 I don't know whether this is a common tactic in  
5 internal investigations, but it certainly is unusual. And  
6 what's unusual is that -- in this case is that Cognizant did it  
7 with the government's full knowledge and, really, for the very  
8 purpose of collecting information for the government.

9 You will hear, Judge, in other words, that  
10 Mr. Schwartz's interviews, and certainly his second interview,  
11 were taken by Cognizant for the purpose of gathering evidence  
12 for trial, that the government knew that and that Cognizant  
13 took advantage of it, even bragged about it when it came time  
14 to apply for leniency.

15 You will hear other evidence, even after the  
16 government has -- had commenced doing some of its own  
17 investigation, much of which had nothing to do with  
18 Cognizant -- it was of a company called L&T, which I think  
19 you're familiar with. You will hear of many ways in which  
20 Cognizant continued to act as an agent of the government.

21 This is evidence that the government would prefer you  
22 not hear. And it has labored long and hard right up until last  
23 night to keep it out of your earshot. But you will see, if you  
24 allow that testimony -- and, respectfully, I think you  
25 should -- that Cognizant was delegated tasks that are normally

1       those performed by the government, performing forensic  
2       analyses, finding experts, asking questions that went to the  
3       elements of criminal offenses, evaluating evidence for  
4       relevance and, perhaps more alarmingly, for determining whether  
5       evidence is exculpatory, advising on who the best witnesses  
6       would be and even prepping witnesses for trial, refreshing  
7       their recollections, specifically rebutting the defenses that  
8       it believed the defense would proffer all in an effort to, in  
9       its words, Cognizant's words, quote, hold the perpetrators  
10      accountable.

11           At the same time you also see the government  
12      deferring to Cognizant in revealing ways, not questioning  
13      privilege assertions that are of the sort that the government  
14      or any party would always challenge, instead trusting  
15      Cognizant's judgment with regard to those privilege  
16      determinations and trusting Cognizant's judgment with regard to  
17      the credibility of witnesses, even for witnesses that are  
18      implicated by the facts of the case.

19           Ultimately, Judge, allowing Cognizant to giftwrap its  
20      version of the case curated in its own interests to the  
21      government, really, in toto, though, again -- and we have to  
22      remind ourselves of this all the time -- Cognizant does not  
23      share the government's obligation to do justice, only to do  
24      what is best for it and its shareholders.

25           We believe that the evidence that you will hear over

1 the next day or so will put meat on the bones of the arguments  
2 we have already made in our papers and will satisfy the  
3 requirements of the cases in which the government has been  
4 deemed responsible for the actions of private parties because  
5 that is what is fair. And it is what is fair here, and  
6 appropriate relief should be granted.

7 Before I sit down, I just wanted to very quickly  
8 address the issue about the scope of the hearing. Again,  
9 there's been a lot written, especially over the last 24 hours  
10 following Your Honor's order yesterday. And we understand that  
11 the government wants to draw a tight circle around the  
12 appropriate time frame.

13 But for the reasons that this Court has articulated  
14 before, we are requesting some leeway here for two important  
15 reasons, and then I'll sit down.

16 First, Your Honor has several times now acknowledged  
17 that what happens on day ten can be relevant to what happened  
18 on day one or day five. What people say and how people act  
19 after the fact is routinely used to prove what their  
20 relationship was at a prior point in time.

21 It's really a matter of common sense as well as of  
22 law. As *Connolly* shows, there's -- and *Connolly* itself acts  
23 well after the statements at issue were considered in  
24 determining whether those statements could be -- the taking of  
25 those statements could be fairly attributable to the

1 government.

2                   Here, the argument is even simpler. What Cognizant  
3 and the government did after the defendants' statement shows  
4 why the coercion employed by Cognizant in getting those  
5 interviews is fairly attributed to the government.

6                   For example, the government delegated to Cognizant  
7 the satisfaction of its *Brady* obligations or declined to pass  
8 on the propriety of Cognizant's privilege invocations tells you  
9 a great deal about their relationship and about whether  
10 Cognizant's actions are, as a matter of fairness, properly  
11 attributed to the government. We will show respectfully that  
12 they are.

13                   And second and more generally, we should -- we would  
14 also ask Your Honor to allow leeway, and I think that Mr. Lewin  
15 will address this a little bit more fully, because this hearing  
16 is not limited to *Garrity*. We have consistently argued, and  
17 the Court held in no uncertain terms -- upon which, by the way,  
18 we relied in selecting the four witnesses that we were  
19 allowed -- that there is a *Brady* component to this case, a  
20 component that goes to the question of when a company's conduct  
21 is fairly attributable to the government not just for *Garrity*  
22 purposes but also for *Brady* purposes as well.

23                   And that story, Your Honor, takes place over a much  
24 longer period of time, not just in the period from April to  
25 October of 2016.

1                   We ask that Your Honor hear the evidence and stop us  
2 when you think this becomes a fishing expedition. We're  
3 satisfied and fervently believe that you will not find that.

4                   In any event, I'm happy to answer any questions that  
5 the Court may have as to scope, but that's our opening  
6 statement.

7                   Thank you.

8                   THE COURT: Mr. Lewin.

9                   MR. LEWIN: Good morning, Judge, and may it please  
10 the Court.

11                  I will be very brief, which is a trend I think you  
12 will find continues throughout the hearing, especially in light  
13 of following Mr. Lustberg and later Mr. Finzi.

14                  Ultimately, Judge, this hearing is about one thing,  
15 which is fairness. All the litigation, from the Rule 17  
16 motions and briefings to the oral argument to the privilege  
17 dispute, all of that -- all of that -- is about the fairness of  
18 this proceeding to two men: my client, Gordon Coburn, and  
19 Steven Schwartz.

20                  Sometimes litigation can obscure the forest. Here --  
21 for all of us, Judge, here, the forest is fairness, how the  
22 government's approach in this investigation yielded an unfair  
23 playing field.

24                  Judge, we think that the hearing across today and  
25 perhaps tomorrow morning will yield proof of that unfairness,

1 proof that highlights how the government's approach to this  
2 investigation renders, as Mr. Lustberg just said, Cognizant's  
3 conduct fairly attributable to the government in a  
4 Constitutional sense.

5 Here, fair attribution in a Constitutional sense  
6 means, as Your Honor knows, two things.

7 First, that the coercive interviews that Cognizant  
8 conducted were fairly attributable to the government and thus  
9 the use of those statements and the fruits derived from those  
10 statements would violate Mr. Coburn and Mr. Schwartz's Fifth  
11 Amendment rights.

12 Second, the extent of the investigative cooperation,  
13 coordination, and direction that the government gave to  
14 Cognizant both directly and via its policies render certain  
15 Cognizant files in DOJ's constructive possession and thus  
16 requires DOJ and not Cognizant to satisfy DOJ's obligations  
17 under *United States v. Brady*.

18 Judge, I will pause there simply to briefly address  
19 scope since Mr. Lustberg covered it in detail. I think the  
20 most important thing that Mr. Lustberg said is that the Court  
21 has already ruled on this.

22 In the January 10th hearing in the transcript at  
23 page 9, the Court explicitly held that this hearing would  
24 address two things. It would address the *Garrity* argument and  
25 the *Brady* argument.

1                   As Your Honor said, we have all been sometimes using  
2 shorthand of describing this as a *Garrity* hearing, but that is  
3 not accurate and it's not what this Court has already held this  
4 hearing would be.

5                   The Court said -- and I'm quoting here from page 9 --  
6 "I might be tempted to just rule on the papers, but I'm not  
7 going to do that. I will give you the chance to make your  
8 threshold showing here. And what I'm going to do, I'm going to  
9 give the defense four witnesses. And I'll leave it to you to  
10 choose the ones you think would get me over the hill toward  
11 seeing it your way."

12                  There's a few other lines. Then you say, "That's for  
13 the motions having to do with the interviews of the defendants  
14 and also the one having to do with whether the corporation is  
15 inside the *Brady* circle, if I can put it that way."

16                  That betokens no ambiguity, Judge. This hearing is  
17 about two things. And as Mr. Lustberg said, and critically,  
18 we've relied on that ruling in selecting our witnesses who will  
19 cover both the *Garrity* and *Brady* aspects of this.

20                  Judge, the characteristics of this investigation that  
21 I'd respectfully ask Your Honor to be on the lookout for today  
22 and tomorrow are threefold.

23                  First, there was a robust company investigation  
24 focused from the very outset, from day one, on getting  
25 cooperation credit from DOJ. And they did that by following

1 specific, explicit DOJ direction regarding its policy. So  
2 that's the first, Judge, a robust company investigation focused  
3 on cooperation credit per DOJ directives.

4 Second, for at least six months, the period between  
5 September 2016 and February 2017, there was an absence of a  
6 parallel DOJ investigation. As Cognizant was investigating and  
7 communicating and reporting and taking feedback, DOJ was doing  
8 nothing -- no interviews, nothing.

9 As Your Honor knows, Justice McMahon said that's  
10 critical in determining whether or not the conduct of Cognizant  
11 on one hand should be attributed to the Department of Justice  
12 on the other.

13 Finally and third, I'd ask Your Honor to look to the  
14 extraordinary levels of coordination and cooperation, both the  
15 volume and timing of the communications between DOJ and  
16 Cognizant and the breadth of the coordination and cooperation.

17 THE COURT: I'm sorry, but forgive me. You're saying  
18 so if the DOJ was doing something, that's bad; and if they  
19 weren't doing something, that's bad?

20 MR. LEWIN: No, Judge. I'm saying if the Department  
21 of Justice was truly conducting an independent investigation,  
22 was not sitting back and waiting for the fruits of Cognizant's  
23 investigation before conducting their investigation, that we  
24 would have a different story here. That's not what was  
25 happening, Judge.

1                   44 interviews were conducted and downloaded to the  
2 Department of Justice before it conducted even one. Not one of  
3 the Department of Justice's interviews was conducted without  
4 first getting a download from Cognizant about what that person  
5 said. Your Honor, I believe there will be substantial evidence  
6 adduced there. And I believe that that will be a substantial  
7 factor, as it was for Judge McMahon in *Connolly*.

8                   The government's position, as Your Honor knows well,  
9 is that this type of investigation is routine, and an adverse  
10 decision here by Your Honor would hamper investigative efforts.  
11 But the way that this investigation was handled, especially in  
12 this time period between September of 2016 and February 2017,  
13 show that it's not routine.

14                   So, ultimately, Judge, and here's where I'll close.  
15 Why does it matter?

16                   As I said at the beginning, and as Mr. Lustberg said,  
17 it matters because it has already resulted in substantial  
18 unfairness to Gordon Coburn and Steven Schwartz. It is unfair  
19 to Gordon Coburn and Steven Schwartz for the government to  
20 deputize and rely on the judgment of a cooperating witness  
21 company that is, to use your words, quote, performing an  
22 investigation for the purpose of exculpating itself, end quote.

23                   It is unfair to Gordon and Steven to take advantage  
24 of interviews conducted under conditions that, if done by the  
25 U.S. government, would be suppressed along with its fruits.

1                   It is unfair to Gordon and Steven for the government,  
2 in a case involving the chief legal officer and the president  
3 of a public company, to defer categorically to the cooperating  
4 company on questions of privilege.

5                   It is unfair to Gordon Coburn and Steven Schwartz for  
6 the government to explicitly delegate -- explicitly delegate --  
7 its *Brady* obligations to the cooperating company without any  
8 guidance, without any supervision.

9                   It is unfair to Mr. Coburn and Mr. Schwartz for the  
10 government to put its investigation on hold for half a year to  
11 allow the company's lawyers to conduct indisputably coerced  
12 interviews of the defendants and of a stable of Cognizant  
13 employees.

14                   It's unfair to Mr. Coburn and Mr. Schwartz for the  
15 government to sit back and receive highly curated --  
16 Mr. Lustberg's term, curated -- downloads of these interviews.

17                   When I say curated, Judge, which parts of the  
18 interviews should be shared with the government? Which  
19 interviews should be shared with the government? The  
20 government ultimately received downloads of 45 of the 450  
21 interviews conducted by Cognizant.

22                   Finally, Judge, it's unfair for the government to  
23 have it both ways, to rely on Cognizant as its investigator  
24 when it suited them and now to be permitted to disclaim that  
25 reliance and prosecute the case that Cognizant's investigators

1 created, curated, and road-mapped for them.

2 This litigation, as Your Honor knows, is not about  
3 government misconduct. We do not allege that any of this  
4 aspect of the investigation was intrinsically improper.

5 This litigation is also not about a typical  
6 Department of Justice investigation or typical corporate  
7 cooperation. The evident coordination between the Department  
8 of Justice and Cognizant was radically atypical. Cognizant  
9 acted at the direction and did, in Cognizant's own words,  
10 everything that the Department of Justice could have asked for  
11 here.

12 This litigation is not about legal technicalities.  
13 It's not about gotcha moments. This litigation and this  
14 hearing is about ensuring Gordon Coburn and Steven Schwartz get  
15 a fair shake, ensuring that the evidence and the exculpatory  
16 materials that we know exist are fully and fairly aired because  
17 that's what the Constitution requires, Judge, and that's what  
18 fairness requires.

19 Thank you, Judge.

20 THE COURT: All right. Government, do you wish to  
21 make a statement?

22 MR. MOODY: Thank you, Your Honor. The legal  
23 equivalent of the Hail Mary pass in football, that's how the  
24 Second Circuit in *Gilman v. Marsh & McLennan* described the  
25 defendants' argument here, that, quote, acts taken by a private

1 company in response to government action and that have as one  
2 goal obtaining better treatment from the government amount to  
3 state action, end quote.

4 That citation is 826 F.3d at 76 to 77.

5 As I'm sure Your Honor is aware, a Hail Mary pass is  
6 an extraordinary thing to see. The quarterback knows the game  
7 is lost and, with nothing to lose, seconds on the clock, he  
8 throws the ball across the field --

9 THE COURT: Let me tell you you're wasting your time  
10 here. Not a football fan.

11 MR. MOODY: I'll leave some of the rest out,  
12 Your Honor. Apologies.

13 But that explains it's a very, very rare event that  
14 very, very rarely succeeds. And I think that explains the  
15 hyperbole in the preliminary statements in Mr. Schwartz's  
16 opening brief.

17 THE COURT: Right. I know enough to understand your  
18 illustration. Go ahead.

19 MR. MOODY: Okay. So the point is, in his opening  
20 brief, Mr. Lustberg said this was an unprecedented situation  
21 where we've directed Cognizant's internal investigation. They  
22 claim the government received information to Cognizant -- and  
23 this is important; this is a direct quote -- to a degree never  
24 seen in criminal prosecutions, end quote.

25 And today Mr. Lustberg said things like this is

1 something that's beyond -- beyond what anyone's ever seen.  
2 Mr. Lewin just called it radically atypical.

3 And that's because, to succeed in this motion, the  
4 defendants need to make the case that this is the  
5 one-in-a-million Hail Mary pass that succeeds. But it's not.

6 This was an ordinary course, white collar  
7 investigation that involved a large company that had evidence  
8 of a crime, no different from the many white collar  
9 investigations that are happening today in U.S. attorney's  
10 offices throughout the country.

11 The defense counsel over there, they all know this.  
12 They or their law firm partners regularly represent large  
13 companies cooperating with and sometimes reporting to the  
14 Department of Justice.

15 So why are they attempting this Hail Mary pass?  
16 Again, apologies. I'm going to extend the sports analogy.  
17 It's because it's part of the playbook. This has become the  
18 playbook for white collar criminal defendants. These are  
19 massive long-shot motions. They're likely to fail. But even  
20 when they fail, the defendants get to put the government on  
21 trial.

22 Now, the Court is likely to hear a lot about policies  
23 today. The Foreign Corrupt Practices Act, or FCPA Pilot  
24 Program, the Yates Memo.

25 Mr. Coburn's attorneys will likely lead the charge

1 here because the company interviewed Mr. Coburn before the  
2 government even knew anything about the allegations prior to  
3 the company's disclosure.

4 Mr. Schwartz has conceded in his reply brief at  
5 page 17 that DOJ policies alone can't create state action,  
6 actually said that.

7 Mr. Coburn, he can't admit that. His only hope is to  
8 use these policies to get his interview suppressed. So he's  
9 going to try to press that argument even though his codefendant  
10 concedes it's meritless.

11 Even though we argued this hearing should not occur,  
12 in part because we know that white collar defense bar is going  
13 to file these motions just to get a hearing in every case  
14 pointing to this one, we're not at all concerned with the facts  
15 here.

16 As we said in our brief and at oral argument, we did  
17 not direct the company explicitly or implicitly whatsoever to  
18 interview the defendants at any time. We didn't engineer those  
19 interviews, and our conduct is not attributable, nor did we  
20 outsource our investigation of Cognizant. And this goes to the  
21 scope question I'll address at the end.

22 I'll just address it. The company had independent  
23 reasons for conducting an internal investigation, and they were  
24 not under the government's control.

25 Now, government, law enforcement agents, and

1 prosecutors of course received information from Cognizant.  
2 That's unsurprising. After all, this was an investigation of a  
3 crime that occurred within a company by employees performing  
4 their jobs. But as you'll hear, no matter what information the  
5 company provided, the government at every step did its own  
6 independent evaluation of that evidence, and the government  
7 conducted a thorough independent investigation, which you're  
8 going to hear about today.

9 Now, we're not calling any witnesses today; we're not  
10 likely to object too much; and we'll try to keep our  
11 cross-examination short. That's not because we don't take this  
12 hearing extremely seriously. It's because this is defendants'  
13 motion; it's their burden.

14 We did not object when the defendants called a  
15 current member of our prosecution team, David Last, and we  
16 voluntarily produced hundreds of pages of detailed internal  
17 notes of the government's calls and meetings with Cognizant.  
18 We've got nothing to hide.

19 We do believe, however, that the defendants'  
20 multiyear effort here has to come to an end. And so we  
21 respectfully ask that this Court ensure the hearing concludes  
22 tomorrow so we can bring this case to trial at long last.

23 Now, if I may address the scope issue briefly.

24 THE COURT: Sure.

25 MR. MOODY: The reason we sent that letter last

1       night, Your Honor, is we read your opinion. We read your  
2       opinion as basically saying that this hearing was limited to  
3       whether, under *Garrity*, those three interviews should be  
4       suppressed.

5           I just want to make clear because our letter was  
6       quite short: We would not object if the defendants asked  
7       questions about things that happened later in time so long as  
8       it's tied to the narrow question of whether we engineered those  
9       interviews.

10           Our concern is in having received the defendants'  
11       exhibit list in the middle of the night, their updated  
12       version -- we received an original version yesterday morning,  
13       and then we received an updated last night. There's 137  
14       exhibits on it. And we think, based on what we know about how  
15       this case has been litigated so far, that this hearing could  
16       conceivably go into every single day and minute of our  
17       investigation over multiple years.

18           They have deliberately called government prosecutors  
19       spanning the entire time of our investigation. We have no  
20       problem with, as Mr. Lustberg indicated, some leeway. We trust  
21       the Court will, of course, police this, but we at least wanted  
22       to make our position clear that we hope this will be narrowly  
23       targeted to those interviews so that we don't go off into areas  
24       that have nothing to do with it whatsoever.

25           THE COURT: Okay. Let me give everybody a little

1       insight into the scope question.

2           I'm sorry. Were you finished?

3           MR. MOODY: I'm finished, Your Honor. Thank you.

4           THE COURT: The scope issue.

5           There's two things going on. Okay? One is the  
6 privilege issue and waiver of the privilege issue, which has  
7 everything to do -- well, not everything but a lot to do with  
8 what the company shared with the government. That gives rise  
9 to a waiver.

10          And there's the substantive issue which has a lot to  
11 do with what the government was saying to the company. Those  
12 two are kind of on a parallel track though going in separate  
13 directions.

14          The case for a waiver is far weaker with respect to  
15 the later material, but the case for relevance may still be  
16 there. As everyone knows, of course, if people sit down and  
17 reminisce about some action they took last week, that can be  
18 relevant; but if they're just sitting around, the attorney and  
19 the client reminiscing, whether it's relevant or not, that may  
20 not have been waived because it comes after any disclosure to  
21 the government.

22          So those two things are in a lot of tension. I'm  
23 going to try to balance them as we go along. Yes, I'll give  
24 you some leeway, to use Mr. Lustberg's term, and the government  
25 does not object. I'm not going to let it go on and on and on,

1 but I will hear nonprivileged information, assuming there is  
2 any, that postdates the actual interviews, for example. But  
3 the waiver is still limited in scope; so you might find you're  
4 tied up a little bit there.

5 But that's all I can really say until I hear what it  
6 is you've got to offer. I'll be frank and tell you I think  
7 your main issue, defense, your main issue and strongest issue  
8 has to do with the interviews and not the more nebulous idea  
9 that Cognizant, in some broader sense, was the government for  
10 all purposes here. But take that as you will.

11 But let's get started. Let's hear from -- who will  
12 be your first witness?

13 MR. FINZI: Your Honor, can I just -- two small  
14 housekeeping points. One, as indicated, one of the government  
15 witnesses is in the courtroom and at counsel table. We don't  
16 have a problem with that, but I just wanted Your Honor to be  
17 aware of that.

18 THE COURT: Sure. That horse left the barn a long  
19 time ago.

20 MR. FINZI: Okay. Second, Your Honor, just again for  
21 the record, the exhibits were delivered to the government at  
22 the government's request at 10:00 a.m. on Monday morning, and  
23 we added less than ten or around ten last night. So I just  
24 wanted to sort of be clear on the timing of that.

25 THE COURT: Nevertheless, 137 exhibits, or whatever

1 it is, is a lot of exhibits. Think about that.

2 MR. LUSTBERG: Judge, look, we've tried to be  
3 overbroad in providing them --

4 THE COURT: Of course you did. Of course. Of  
5 course. Of course. You don't even need to finish that  
6 sentence. You don't need to finish that sentence. I know what  
7 you do when you designate exhibits. You want to make sure  
8 you're not boxing yourself out. I get that. All I'm saying is  
9 to think about the number of exhibits as you're putting them  
10 on.

11 But I'll hear from your first witness.

12 MR. MOODY: Your Honor, may I make one brief point?

13 THE COURT: Sure.

14 MR. MOODY: We want to make the point. So,  
15 obviously, we feel very comfortable having our current  
16 prosecutor testify and former prosecutor. We think it's  
17 appropriate to do this. We're not fighting it in any way, and  
18 we don't know exactly what the defense is going to ask them.  
19 We'd just like to make the point that, to the extent that the  
20 government attorneys testify today and are asked questions that  
21 may reveal their mental impressions or internal DOJ  
22 communications, our position is we're not waiving -- making a  
23 broader waiver of any privilege beyond the narrow confines of  
24 this hearing.

25 So we just want to make -- be on the record there.

1       We just want to protect any argument later that there's been  
2       some sort of broad waiver.

3                   THE COURT: Yes. And, look, I think I understand the  
4       reasons why the defense is calling such a witness, and I take  
5       your cooperation, small C "cooperation," with that as being  
6       designed to move things along. But I get it that that doesn't  
7       open up everything that attorney ever did.

8                   Obviously, it's somewhat extraordinary to have a  
9       prosecutor called as a witness, not unheard of but unusual.  
10      And I get it that you're not waiving anything by agreeing to  
11     that.

12                MR. MOODY: Thank you.

13                MR. LUSTBERG: So the first witness that we requested  
14     was Kevin Gingras.

15                MR. FINZI: Could he be outside?

16                THE COURT: By the way, everyone, there's no jury  
17     here. Find a place to stand that's comfortable for you.  
18     That's fine. Near a microphone, however, is a good idea.

19                THE COURTROOM DEPUTY: Remain standing, raise your  
20     right hand.

21                   KEVIN GINGRAS, DEFENSE WITNESS,

22                   having been duly affirmed, testifies as follows:

23                THE WITNESS: I do.

24                THE COURTROOM DEPUTY: Keep the microphone close to  
25     you. State your name for the record and spell it, please.

1 THE WITNESS: Kevin Gingras, K-E-V-I-N,  
2 G-I-N-G-R-A-S.

3 THE COURTROOM DEPUTY: Thank you.

4 (DIRECT EXAMINATION)

5 BY MR. LUSTBERG:

6 Q. Good morning, Mr. Gingras. My name is Larry Lustberg.  
7 We've never met before I don't think, have we?

8 A. I don't believe so.

9 Q. So thank you for coming today.

10 How are you employed, sir?

11 A. Currently?

12 Q. Yes.

13 A. I am an in-house attorney at Lockheed Martin Corporation.

14 Q. Before that where were you employed?

15 A. I was with the Department of Justice in various capacities  
16 for about 13 years.

17 Q. If you would, just briefly walk us through what those  
18 various capacities were.

19 A. So I joined the Department of Justice in 2005 after I did  
20 a couple clerkships after law school. I joined in the civil  
21 rights division criminal section and also went on a detail to  
22 the Eastern District of Virginia as a special assistant United  
23 States attorney.

24 I transitioned to the criminal division's appellate  
25 section at main justice. So I was an appellate attorney for

1 about five years, working on various cases throughout the  
2 country in criminal appeals.

3 After that, I went to the FBI where I was special  
4 counsel to director -- FBI Director Mueller and served as a  
5 sort of national security advisor. And after a period of time,  
6 I became his deputy chief of staff. So I did that for, I  
7 think, a couple of years.

8 Then after that I went back to the Justice Department  
9 as a line attorney in the fraud section focusing on Foreign  
10 Corrupt Practices Acts and other white collar investigations.

11 Q. Okay. In that capacity in particular, but really in any  
12 of those capacities, are you familiar with the incentives that  
13 companies have to investigate and cooperate with the government  
14 with regard to, in particular, FCPA violations?

15 A. Well, I'm certainly aware of the Yates Memo and the FCPA  
16 Pilot Program that later became the corporate enforcement  
17 principles and the sentencing guidelines but also incentivized  
18 to cooperate.

19 Q. We'll come back to those lists a little bit later.

20 So in this case, Mr. Schwartz and Mr. Coburn's case,  
21 how did you -- what was your very first involvement in the  
22 case?

23 A. My very first involvement in the case would have been in  
24 2016 in September. I can't remember exactly when, but some of  
25 my supervisors assigned me to a case where Cognizant

1       technologies had apparently made a disclosure. And so they  
2       assigned me to that case.

3       Q.     Had you had any involvement prior to that with Cognizant?

4       A.     No, I'd never heard of it before.

5       Q.     And had you worked in the past with the U.S. Attorney's  
6       Office for the District of New Jersey?

7       A.     I don't -- I might have as an appellate attorney, but I  
8       don't remember. Not in a trial attorney capacity.

9       Q.     And prior to that time had you had any interaction with  
10      the DLA Piper law firm that had self-reported matter?

11      A.     No.

12      Q.     Did you know, when you first became involved, that DLA had  
13      reported the matter?

14      A.     I think I learned pretty quickly which law firm was  
15      representing Cognizant and reported it.

16      Q.     Okay. So how long did you remain involved on the  
17      Cognizant matter?

18      A.     So I remained on it until I left the Justice Department in  
19      June of 2018.

20      Q.     2018 you said?

21      A.     2018.

22      Q.     Right. And what was your role in that investigation?

23      A.     So I was a prosecutor on the case, and I worked it in  
24      partnership with AUSAs from the District of New Jersey and with  
25      the FBI.

1 Q. If you could, tell us what the DOJ team was for the  
2 Cognizant investigation.

3 A. So, again, I think it had various iterations over a period  
4 of time. So in the beginning I believe Oz Benvenuto, who is  
5 the AUSA from the District of New Jersey, was assigned to it.  
6 So it was the two of us, and there was FBI agents. And then we  
7 all had our supervisors, lots of supervisors.

8 Q. Okay. When you say lots of supervisors, at the beginning  
9 of the case who was your supervisor?

10 A. So I think my direct supervisor at the time of the case  
11 was Leo Tsao, and he reported to the chief of the unit, who was  
12 Dan Kahn.

13 Q. Who was who?

14 A. Daniel Kahn.

15 Q. Who did you -- during the time that you've discussed from  
16 2014 -- I'm sorry -- 2016 to 2018, with whom did you primarily  
17 interact on behalf of Cognizant?

18 A. With whom did I primarily act on behalf of Cognizant?

19 Q. No, on behalf of.

20 So you interacted with counsel for Cognizant,  
21 correct?

22 A. Correct.

23 Q. Okay. And who was that?

24 A. That would have been Karl Buch from DLA, Grayson Stratton  
25 from DLA, and I can't remember -- I can't recall specifically

1 who else, but I think there were a couple other attorneys.

2 Q. And when I say "interact," I just want to make sure we  
3 have it all. That included phone calls, right?

4 A. Yes.

5 Q. And in-person meetings?

6 A. Yes.

7 Q. And emails?

8 A. Correct.

9 Q. And were there also text exchanges?

10 A. No.

11 Q. No texting?

12 A. No.

13 Q. And I take it that all throughout the period that you were  
14 there, you had periodically interactions with those people,  
15 correct?

16 A. Yes.

17 Q. I assume it's more at some time, less at others; but  
18 throughout the time period, right up until you left in June of  
19 2018, you were interacting with that DLA team with regard to  
20 this matter, right?

21 A. That's correct.

22 Q. And sometimes in the course of that interaction --  
23 actually, let me focus on the initial few weeks. And in  
24 particular I'm focusing on the time period between the time you  
25 got involved -- which, if I understand correctly, was

1 September 2nd, 2016. Does that sound right to you?

2 A. I'd have to look back. That seems a little bit early.

3 Q. Okay. So if we could just show -- let's show our  
4 Exhibit 1. See -- can you see that on your screen?

5 A. Yes.

6 MR. LUSTBERG: Scroll down.

7 BY MR. LUSTBERG:

8 Q. Friday, September 2nd, 2016, I see an email from Daniel  
9 Kahn to Zach Intrater, Paul Murphy, and Oz Benvenuto.

10 Those are all people from the U.S. Attorney's Office  
11 in New Jersey, right?

12 A. Correct.

13 Q. It says, "Great. Thanks. I'm looping in Leo Tsao, who  
14 will be supervising the case. I believe we are giving it to  
15 Kevin Gingras, but Leo hasn't had a chance to talk to him yet.  
16 Once he has, he will put" -- I can't see -- "Oz and Kevin in  
17 touch."

18 So are you saying that, as of the 2nd, you were not  
19 yet aware of the case?

20 A. I could have been. I don't remember whether it was that  
21 day or some time after that. I know, reviewing some of the  
22 other emails, that I was traveling at the time; so I don't know  
23 when exactly I had a chance to speak with them.

24 Q. But focusing on the time period in early September through  
25 the 23rd -- which you know that that's the date that

1       Mr. Schwartz was reinterviewed?

2       A.     Yes.

3       Q.     Okay. I really want to focus on that time period --

4       A.     Okay.

5       Q.     -- and on the government's actions during that time  
6       period. So we're going to look at some of those early  
7       communications.

8               And in particular, if we could look at our Exhibit 2.

9               MR. LUSTBERG: Judge, just for the record, we're  
10       showing these exhibits right now. I'm not going to take the  
11       time to formally move them in, unless the Court wants me to, on  
12       a document-by-document basis.

13              THE COURT: I don't think that's necessary. If  
14       anybody has an objection, certainly speak up.

15              MR. MOODY: No objection.

16              THE COURT: It's a hearing; it's not a trial. We'll  
17       see what you have for us.

18       BY MR. LUSTBERG:

19       Q.     So the top email on Exhibit 2, if you could look at that,  
20       this is an email to Leo Tsao from Jonathan Haray.

21              Is Jonathan Haray one of the people you interacted  
22       with at DLA?

23       A.     The name sounds familiar, yes.

24       Q.     That refers to a request in Dan's -- from Dan during our  
25       call last week.

1                   Do you know what that refers to? When I say "that,"  
2 what request we're talking about.

3           A. Well, based on this email, it seems to be that he had  
4 requested to get personal email addresses.

5           Q. So what's going on here is that the government is  
6 requesting information from Cognizant, correct?

7           A. Correct.

8           Q. Was that unusual for the government to request information  
9 from Cognizant during that period?

10          A. I don't think it was unusual at the beginning of any of  
11 these corporate investigations to ask for this kind of  
12 information.

13                   MR. LUSTBERG: I misplaced my papers.

14           BY MR. LUSTBERG:

15          Q. Let me direct your attention now to -- quickly to  
16 Exhibit 3, again with regard to government requests.

17                   So on the second page of that there's an email on  
18 September 9th from Karl Buch to Leo and you.

19                   Leo again is who?

20          A. Leo was my supervisor at the time.

21          Q. It says, "It was great catching up with you yesterday. As  
22 you requested, I write to let you know that we intend to  
23 interview Lakshmi Narayanan, Cognizant's vice chairman of the  
24 board, on Monday. Please let me know if you have any  
25 questions."

1                   I wanted to ask you about the phrase "as you  
2 requested."

3                   Do you know what the government had requested of  
4 Cognizant on September 8th, which was the day before?

5                   A.    I don't recall the conversation, but looking at this email  
6 it seems like we had made a request and that this was a  
7 response to it. I don't know the specifics of what we actually  
8 requested, though.

9                   Q.    So you can't tell from here, it says, "As you requested, I  
10 write to let you know that we intend to interview" -- this  
11 person, Lakshmi.

12                  Do you know, does that refresh your recollection at  
13 all that the government may have made a request to know who  
14 Cognizant was interviewing?

15                  A.    I mean, based on this email it seems that that's likely  
16 what the request was, but I don't have a specific recollection  
17 of it.

18                  Q.    So as of September 9th, you knew that Cognizant was going  
19 to interview -- I'll call him Lakshmi. Correct?

20                  A.    Based on this email, yes.

21                  Q.    Did you do anything to participate in such an interview?

22                  A.    No.

23                  Q.    Did you give Cognizant counsel any guidance as to what the  
24 subject of that interview should be?

25                  A.    No.

1 Q. Was there any further discussion about the interview with  
2 Lakshmi between you and Mr. Buch or anybody else from DLA at  
3 that time?

4 A. I don't recall anything like that.

5 Q. So why did the government -- if you don't specifically  
6 recall -- let me ask you this way.

7 Why did the government request to know who was being  
8 interviewed?

9 A. Well, I mean, I think early on in an investigation like  
10 this, I mean, I think there's a number of things that  
11 prosecutors -- number of questions prosecutors are going to  
12 ask. I think primarily, you know, is there an ongoing crime?  
13 Is there a chance that evidence is going to be destroyed? Are  
14 there people that are going to flee that we would want access  
15 to? So are there personal email addresses and other steps that  
16 we can take proactively?

17 So, again, I don't recall specifically what the  
18 request was in relation to this. I'm not denying that we made  
19 a request, but I can't recall exactly why we would have asked  
20 about this particular individual.

21 Q. Let me tell you what's puzzling me. Maybe you can help  
22 me.

23 A. Sure.

24 Q. The government has asked, you think, based on this, to  
25 know when Cognizant was going to interview certain people or

1 what interviews Cognizant was going to do. That was the  
2 inference that you drew, right?

3 A. Correct.

4 Q. Right. And so my question is -- but you answered that no  
5 direction was given, no questions were asked about it, no --  
6 the government didn't participate. And I'm trying to  
7 understand how that could be.

8 A. Trying to understand how what could be?

9 Q. I'm trying to understand why you would want to know who  
10 was being interviewed but not provide any information or  
11 direction or questions or guidance. And you said, if I'm  
12 right, that there's certain things that the government wants to  
13 know early on in an investigation -- is the crime continuing?  
14 That sort of thing. But you didn't give any guidance to  
15 Cognizant with regard to what to ask this witness. Is that  
16 right?

17 A. That's right.

18 Q. So if that's the case, why did you even want to know who  
19 was being interviewed?

20 A. Well, I think wanting to know who the company's  
21 interviewing so that we can potentially deconflict our own  
22 investigation is not unusual in these corporate criminal cases.  
23 So to the extent we were asking things that they were doing in  
24 the moment, I think we might have been trying to understand  
25 what was happening in their investigation so that we could

1 deconflict it from whatever steps we would eventually decide we  
2 were going to take.

3 Q. And in order for you to know what was going on in their  
4 investigation, was it enough to just understand who they were  
5 interviewing? Is that what you're saying?

6 A. I think so. I mean, I think we'd have to have some  
7 background. But, again, this is very early on. I think I got  
8 pulled into this case literally days before this. So I think  
9 we were also just trying to understand the universe of what the  
10 facts were and what was happening since things were happening  
11 very quickly.

12 Q. And in order to do that, just to make sure I understand,  
13 your testimony is that you didn't request any -- that any  
14 particular information be gathered from this witness?

15 A. Definitely not.

16 Q. Pardon me?

17 A. Definitely not.

18 Q. So this was one where you just -- Cognizant was going  
19 ahead and they were going to do this interview without any  
20 guidance from the government, right?

21 A. Again, I think that was true with all the interviews they  
22 were doing.

23 Q. If I can just go to the first page of this document. On  
24 the bottom of it there's an email from Mr. Buch to you and Leo  
25 where it says, "Please let me know if you are available for a

1 call with John, Gray, and me between 2:00 and 4:00 p.m. today."

2 This is now September 14th.

3 "We would like to raise some recent developments with  
4 you."

5 Was it part of the process in these early days --  
6 this is now September 14 -- that Cognizant would raise recent  
7 developments with you?

8 A. I'm sorry. The first part of your question was it part of  
9 the --

10 Q. What you did during this period in early September.

11 A. I mean, in reviewing some of the emails, yes. DLA reached  
12 out to us to update us throughout the course of their  
13 investigation.

14 Q. And I just want to make sure I understand. As they were  
15 updating you, were you providing any guidance to them as to how  
16 to go about their work?

17 A. Definitely not.

18 Q. Absolutely no guidance?

19 A. No.

20 Q. Do you have a recollection about what the recent  
21 development was that Cognizant brought to your attention on  
22 September 14, 2016?

23 A. Yes. I believe it was about notes that they discovered  
24 that belonged to Mr. Schwartz.

25 Q. All right. And they had just discovered those notes right

1 around that time, right?

2 A. That's my recollection.

3 Q. And so they were updating you, essentially in real time,  
4 as to what their investigation was uncovering, correct?

5 A. I mean, assuming they found them that day, I suppose real  
6 time is not a stretch. But they let us know pretty quickly  
7 after they found them.

8 Q. Okay. Well, I don't mean real time like that moment, but  
9 I will represent to you that they found the notes on  
10 September 9th. It's pretty -- as you said, pretty promptly,  
11 right?

12 A. If they found them on the 9th, yeah, that's still  
13 promptly. Sure.

14 Q. Now, are you aware that they obtained these notes from  
15 Mr. Schwartz's laptop computer?

16 A. Yes. I knew it was from one of his devices.

17 Q. Do you remember whether it was from his laptop computer?

18 A. I don't recall which of the devices it was.

19 Q. Do you remember a dispute, though, between Cognizant and  
20 Mr. Schwartz with regard to his laptop computer?

21 A. I don't.

22 Q. You have no recollection of that?

23 A. I don't believe I was ever told about one.

24 Q. Okay. In any event, do you have a recollection of a phone  
25 call on September 14, 2016, with regard to this matter?

1 A. I know that there was a phone call; I don't recall the  
2 specifics of it.

3 Q. Let's see if we can help refresh your recollection on  
4 that.

5 MR. LUSTBERG: If we could turn to Defendant  
6 Exhibit 4.

7 A. Yes.

8 BY MR. LUSTBERG:

9 Q. You can also -- Mr. Gingras, all of the exhibits are in  
10 front of you in that binder if it's easier for you to look at  
11 paper.

12 A. Okay.

13 Q. It's a two-page exhibit. If you prefer to see it that  
14 way, that's fine.

15 A. Which tab is this?

16 Q. Exhibit 4.

17 A. Okay.

18 Q. So at the end of that exhibit it says, "We intend to  
19 interview Lakshmi. Conduct some additional interviews on  
20 Monday and Tuesday, Mani and B. Gosh (head of procurement).  
21 Wednesday, intend to meet with Schwartz (and his lawyer, Josh  
22 Rievman, NY). Coburn" -- it says Coburn, but -- "Coburn in  
23 the afternoon."

24 And my question is, once again here, your testimony  
25 is that you provided absolutely no guidance as to what any of

1 the questions that should be asked to any of those people; is  
2 that right?

3 A. That's correct.

4 Q. They are, however -- they, Cognizant through DLA -- is  
5 telling you who they're going to be interviewing next. And  
6 that was per the government's request that they do so. Is that  
7 right?

8 A. I don't know that this was per the government's request  
9 that they do so. I mean, the previous exhibit that you were  
10 showing about Lakshmi, I mean, that could have been Leo asking  
11 that question about him specifically. I'm not sure I knew  
12 enough on September 8th to ask any intelligent questions about  
13 any specific person; so I don't know whether this is in  
14 response to a request that we made or if they're just letting  
15 us know.

16 Q. So you don't know?

17 A. So I don't know.

18 Q. Was this email the first time that you learned that  
19 Mr. Coburn and Mr. Schwartz had previously been interviewed?

20 A. I think -- I mean, if there's a reference on here, I think  
21 so.

22 Q. In the middle of the first page it says, "DLA interviewed  
23 Coburn and Schwartz and they both denied."

24 A. Right.

25 Q. Do you see that?

1 A. Yes.

2 Q. Before that time had you known that?

3 A. I don't believe so.

4 Q. Did DLA at the time, Mr. Gingras, explain to you what the  
5 rules were that they imposed upon interviews with people like  
6 Mr. Schwartz and Mr. Coburn?

7 A. No.

8 Q. Did there ever come a time when you became aware of the  
9 rules that were imposed by DLA with respect to interviews they  
10 were doing of people?

11 A. Yes.

12 Q. Okay. When did you become aware of that?

13 A. When I read your briefing in advance of this hearing.

14 Q. Okay. So up until the briefing here, you had no idea that  
15 DLA's policy was to have only one lawyer in the room who could  
16 not speak or take notes?

17 A. Well, I should say I may have learned that that happened  
18 after the fact at some point. I don't -- when I read it in the  
19 briefing, it didn't sound familiar to me. But I'm not  
20 precluding the possibility of at some point I learned about it  
21 later. But certainly during this time we weren't having  
22 conversations about exactly how they were conducting their  
23 interviews.

24 Q. And you don't know when you found that out?

25 A. I can't recall. Maybe it was -- it could have been during

1 an interview download or something. I don't know.

2 Q. Well, do you remember how you responded when you found out  
3 that that -- those were the rules of engagement for interviews  
4 by Cognizant?

5 A. No. I don't know how I responded.

6 Q. But you would admit that those types of rules are not  
7 rules that the government could use in interviewing witnesses,  
8 could they?

9 A. No, those are not rules -- the rules for the government  
10 would certainly be different than they would be for a company.

11 Q. Looks like --

12 THE COURT: Could I just interrupt for one moment  
13 just to clarify?

14 MR. LUSTBERG: Sure.

15 THE COURT: This email, Mr. Gingras, is you telling  
16 Mr. Benvenuto what Buch and Sharratt had told you?

17 THE WITNESS: That's correct, Your Honor, except  
18 Mr. Sharratt was with the SEC. So I had taken notes apparently  
19 of the September 14th call with Mr. Buch from DLA. And this  
20 was the information he conveyed to us.

21 And then I sent it on to Oz Benvenuto, who wasn't  
22 able to make the call.

23 THE COURT: Got it. Thank you.

24 MR. LUSTBERG: That's exactly what I was going to  
25 ask.

1 BY MR. LUSTBERG:

2 Q. And why did you do that?

3 Why did you send this on to Oz?

4 A. Well, because we were partnering on this together. And  
5 for whatever reason, he wasn't able to make the call that we  
6 had.

7 Q. Was -- at the time you at DOJ were not doing your own  
8 investigation of Cognizant, correct?

9 A. Well, I wouldn't say that's correct.

10 Q. Fair enough. I mean, at the time DLA was interviewing  
11 witnesses, right?

12 A. Yes.

13 Q. You were not interviewing witnesses? You being DOJ were  
14 not interviewing witnesses; is that right?

15 A. No.

16 Q. Was the District of New Jersey, was Oz or anybody there,  
17 interviewing witnesses, gathering documents, doing the kinds of  
18 things that DLA was doing at the time?

19 A. No.

20 Q. Now, earlier you said that you were aware that  
21 Mr. Schwartz was reinterviewed on September 23rd, right?

22 A. Correct.

23 Q. And right after -- and he was interviewed by DLA and by  
24 Cognizant -- which was Cognizant's counsel at the time, right?

25 A. I believe that's correct.

1 Q. And did they update you with regard to what had occurred  
2 at that interview?

3 Withdrawn.

4 That day on September 23rd, the day of the interview,  
5 did they tell you what had occurred?

6 A. I can't recall whether it was that day or shortly  
7 thereafter.

8 Q. When you say shortly thereafter, any sense of the  
9 timeframe of that?

10 A. I don't. I think they're reflected in some of the emails  
11 if you want to direct me to some that may refresh my  
12 recollection.

13 Q. Let me show you -- I'll just move on.

14 There was a phone call, I am going to represent to  
15 you, on September 23rd.

16 A. Okay.

17 Q. I know you've reviewed all the documents and so forth in  
18 preparation for this testimony today, right?

19 A. I've reviewed some of them.

20 Q. Okay. Do you know what that phone call on the 23rd, the  
21 same day as Mr. Schwartz's interview, was about?

22 A. Well, I apologize. Which phone call are we talking about?

23 Q. Let me quote to you. In the government's brief they say  
24 that the subject of the -- withdrawn.

25 That there was a call on September 23rd. And at the

1 time of that call on the 23rd, the company had asked to push  
2 back a meeting that had been scheduled with DOJ for  
3 September 27th.

4 A. That sounds familiar.

5 Q. And my question for you is do you know whether, when you  
6 spoke to Cognizant for that purpose on September 23rd, they  
7 briefed you as to what had occurred with regard to  
8 Mr. Schwartz's interview on that day?

9 A. I don't recall if that happened or not. It may have.

10 Q. They said that they had asked to push back the meeting  
11 because there were complications in their fact finding.

12 Does that ring a bell?

13 A. Yes. I mean -- yes.

14 Q. Well, do you know what the complications in DLA's fact  
15 finding were as of September 23rd?

16 A. I don't recall.

17 Q. But in any event, you don't recall -- there was a call on  
18 the 23rd, the date of Mr. Schwartz's interview, and you don't  
19 recall whether on that day you were updated as to what had  
20 occurred in that interview?

21 A. If the call occurred after the interview, I'd find it  
22 surprising if they wouldn't have at least told us generally  
23 what happened; but I don't recall specifically.

24 Q. You know that that interview is really a very important  
25 interview in this case, right?

1 A. Yes.

2 Q. I mean, there's numerous communications where you talk  
3 about how that is critical and there's questions about who's  
4 going to testify with regard to that interview --

5 A. Sure.

6 Q. -- and that sort of thing because it was an important part  
7 of the government's -- of the case that Cognizant at least was  
8 building as of that time, right?

9 A. Well, I'm certainly aware that that interview was  
10 important for a number of reasons, including to the  
11 government's case, yes.

12 Q. And given the importance of that interview and what had  
13 occurred, don't you think they would likely have briefed you on  
14 it on the very same day it happened?

15 A. I believe I said that it's certainly possible that they  
16 did so, and perhaps it's likely that they did so if it happened  
17 after that. I just -- I don't have a specific recollection of  
18 it.

19 Q. Were you aware that, as of the time of that second  
20 interview of Mr. Schwartz on September 23rd, that Cognizant had  
21 already decided to terminate his employment?

22 A. I was not.

23 Q. When did you become aware that that was the case?

24 A. When did I become aware --

25 Q. When did you become aware that, as of September 23rd, that

1 Cognizant had already made a decision to terminate  
2 Mr. Schwartz?

3 A. When I read the briefing that -- your briefs in advance of  
4 this hearing.

5 Q. So up until you read the briefing in this case, you had no  
6 idea that that was the case?

7 A. Correct.

8 Q. Okay. So were you aware that Cognizant was holding off on  
9 effecting any termination so that they could get additional  
10 information from Mr. Schwartz and reinterview him?

11 A. No.

12 Q. So let me show you -- take a look at Exhibit 14.

13 Do you recognize Exhibit 14?

14 A. Sort of. These look like possibly my notes.

15 Q. Can you tell from this when those notes were from?

16 A. I mean, they seem fairly early on. I wouldn't remember  
17 exactly what the date was.

18 Q. Pardon me?

19 A. They seem to be from fairly early on in the case, but I  
20 don't remember exactly what day these would have been.

21 Q. So the meeting that we talked about before was supposed to  
22 take place on September 27th and, in fact, took place on  
23 October 6, 2016.

24 Do you recall that?

25 A. Yes.

1 Q. Do these look like notes from the October 6, 2016,  
2 meeting?

3 A. Yes. Looks like they could be, yes.

4 Q. If you look at the bottom of the second page.

5 A. Okay.

6 Q. You'll see a section called "Remediation."

7 Do you see that?

8 A. Yes.

9 Q. And it says, "Schwartz: On Garden leave."

10 What does that mean?

11 A. I think that just means on paid leave.

12 Q. Then it says, "Trying to get as much as we can."

13 Do you see that?

14 A. Yes.

15 Q. These are your notes. What did you mean by that?

16 A. I think I'm noting here what DLA is telling me and Oz and  
17 the team that Cognizant is doing and is doing with certain  
18 personnel, including Mr. Schwartz.

19 Q. And I get that. I mean, my question is were you aware  
20 that what Cognizant was doing was, instead of terminating him,  
21 keeping him on so that he could continue to be questioned?

22 A. I mean, I don't know that I would say I was aware that  
23 they were keeping him on just so he could be questioned. I  
24 think they were trying to conduct their investigation, and he  
25 had information that they were trying to elicit from him.

1 Q. Right. And if he had been terminated, it would be much  
2 harder to get that information, wouldn't it?

3 A. Most likely.

4 Q. You said most likely?

5 A. Correct.

6 Q. That's based on your experience that if you terminate  
7 somebody, it's much harder to get an interview with them.  
8 Isn't that true?

9 A. I think that's usually true.

10 THE COURT: Sorry. Help me out. Who's RW?

11 MR. LUSTBERG: Pardon me?

12 THE COURT: RW? Who is that?

13 THE WITNESS: RW. I can't recall, Your Honor. I'm  
14 sorry.

15 THE COURT: Fine.

16 BY MR. LUSTBERG:

17 Q. Just to clarify and to go back to this subject, I want to  
18 show you another exhibit dated -- which is Exhibit 15. These  
19 are notes dated December 16th, 2016 [sic]. I recognize this  
20 was after the period, but it's going to refer back to the very  
21 subject we talked about before.

22 Do you see that exhibit?

23 A. Yes.

24 BY MR. LUSTBERG:

25 Q. I'd like to walk you through that if you could. So it

1 starts off by saying, "Interviews last week. Thought we could  
2 do better."

3 Any idea of what that's a reference to?

4 A. I don't -- I'm sorry. Are these my notes?

5 Q. You tell me. I thought they were based on the type and so  
6 forth; but if you don't know, you don't know.

7 MS. PATEL: I think we can just represent those are  
8 his notes.

9 THE COURT: That was not very audible. You're  
10 saying, Ms. Patel, that you can help us out?

11 MS. PATEL: We can represent that those are  
12 Mr. Gingras's notes if that makes this easier.

13 THE COURT: You believe they are. Okay.

14 Not evidence, obviously. But if that helps, go  
15 ahead.

16 BY MR. LUSTBERG:

17 Q. So my question is, taking a look at those, any idea what  
18 you meant when you wrote "thought we could do better"?

19 A. Yeah, I think I'm quoting what -- this appears to be a  
20 conversation with Mr. Buch. I believe I'm summarizing what  
21 Mr. Buch told me.

22 Q. Okay. Then it goes on to talk about "coming up with a  
23 rehab program and represent to people that we are more  
24 interested in finding out what the facts are and if we're  
25 comfortable you're being straight up, then you won't lose your

1 position."

2 So the idea is that if you -- if people will speak,  
3 then they won't get fired; is that right?

4 A. That could be. That seems like a fair summary of this.

5 Q. And Karl says -- at the end it says, "Karl: We are going  
6 to terminate a lot of people, but there are lots of line people  
7 that have info but are holding back."

8 Do you see that?

9 A. Yes.

10 Q. And you say right before that, "Devil is in the details, I  
11 said," meaning you.

12 What did you mean by "devil is in the details"?

13 A. I think I was just responding to his comment that the  
14 people he's talking about are not supervisors and could have  
15 been people just following orders.

16 Q. Here's my question -- I'm sorry.

17 When you said devil is in the details, what is it  
18 that you think you meant?

19 A. Well, based on this, it seems like my response is to him  
20 saying that the people he's talking about were not supervisors  
21 and could have just been following orders.

22 Q. Okay. Got it.

23 So when you say devil is in the details, what are you  
24 saying there?

25 A. Of whether people were actually just following orders, I

1 suppose.

2 Q. Got it. Okay.

3 This email, would you agree that it essentially  
4 confirms what you have said before, that people are more likely  
5 to talk if they haven't been fired?

6 A. Sure. Yes.

7 Q. And, likewise, just a little bit -- like, a few days  
8 earlier than that -- let me show you Exhibit 16.

9 A. Okay.

10 Q. This is a lengthy exhibit; so let me direct you to a  
11 particular page, which is page -- at the bottom it will say  
12 page 13 of 18, Bates Number 135.

13 A. Okay.

14 Q. There's a section there called "Individual Remediation."  
15 Do you see that?

16 A. Yes.

17 Q. Among the things it says, it says, "SEC: Can you give us  
18 a list of the people being terminated and another of the  
19 people."

20 And DLA says, "Sure. The only people I think are  
21 important to you are Mani and Sridhar."

22 Do you see that?

23 A. Yes.

24 Q. Okay. And then if you skip to the next page, it says  
25 "AB."

1                   Do you know who AB was?

2   A.   That would have been -- I believe that's a reference to --  
3   when is this? December 2017? So that would have been Andrew  
4   Bruck, who was the AUSA from New Jersey.

5   Q.   And Mr. Bruck says, "And you guys are proposing  
6   separation? Let me get back to you on that one. At the end of  
7   the day, it's your decision."

8                   Why was the government interested in whether  
9   separation was being proposed?

10   A.   Well, I think we were trying to understand -- and I think  
11   what Mr. Bruck is trying to understand here -- is our ability  
12   to have access to witnesses who are overseas.

13                   You know, in these international investigations and  
14   these big white collar investigations, it's not unusual that,  
15   when a company is remediating and deciding what to do with a  
16   number of its employees, they will try to make witnesses  
17   available to us. So I think that that's what Mr. Bruck is  
18   trying to understand.

19   Q.   But the discussion is not about travel overseas. I don't  
20   want to argue with you, but this is about separation. "Are you  
21   guys proposing separation?" And on the page before, it talks  
22   about whether there's a list of people being terminated.

23                   So just to follow up on your point, people who are  
24   terminated or being separated are not people who the company is  
25   giving access to the government?

1 A. Well, it would make it a lot harder, but I think we  
2 were -- I guess just to -- and I don't mean to argue with you,  
3 sir; I just -- it seems like what we're talking about are  
4 witnesses who are overseas, which presents a particular  
5 challenge for the prosecution team.

6 Q. I understand. Of course that's true. But this discussion  
7 is about terminations and separation, right?

8 A. Correct.

9 Q. And your response was that what companies try to do is  
10 make people available. My question is, is one of the ways they  
11 make people available by not terminating them?

12 A. Well, one of the ways they -- certainly, if a company is  
13 trying to get cooperation credit, I think one of the things  
14 that they do, and did in this case perhaps and certainly do in  
15 a lot of other cases, is put people on leave to make them  
16 available to the government. But as Mr. Bruck said here, at  
17 the end of the day, it's the business's decision as to what to  
18 do.

19 Q. Let me make sure I understand. It's the business's  
20 decision what to do. But in terms of how much credit the  
21 business is going to get for cooperating with the authorities,  
22 one of the things that's measured is their having given access  
23 to the government to certain people, right?

24 A. I think that's correct. I think those are in the  
25 policies.

1 Q. And you're not giving access to certain people if you  
2 terminate them and they're not available for interviews; is  
3 that right?

4 A. Well, I think a company has to weigh its remediation and  
5 mitigation efforts against its desire to get cooperation with  
6 the government. So I think -- again, I think that's why  
7 Mr. Bruck says here it's your decision because it's the  
8 company's ultimate decision in trying to balance two things  
9 that are potentially intentioned with each other and decide how  
10 they want to proceed.

11 Q. You were around, weren't you, when Cognizant made its  
12 so-called Filip Factor presentation, correct?

13 A. I was.

14 Q. That was in May of 2018 right before you left, right?

15 A. Yes, sir.

16 Q. Let me show you Defense Exhibit 17, which is called  
17 "Cognizant Filip Factors Presentation."

18 Do you see that?

19 A. Yes, sir.

20 Q. Do you know what this document is?

21 A. I believe these are paralegal notes of that presentation.

22 Q. Fair enough. And I want to direct your attention, just in  
23 terms of what we were talking about a few minutes ago, to  
24 page 4 of 10, which is Bates Number 000206.

25 Just a few lines down it says, "KB: Also consistent

1 with the DOJ deconfliction policy, we made sure those people  
2 were available to us and you."

3 Once again, what's the deconfliction policy?

4 A. Well, I don't know that there's an actual deconfliction  
5 policy. I can't remember which of the policies it was --  
6 perhaps it's the Yates Memo or one of the other policies --  
7 highlights that one factor in considering a company's  
8 cooperation is their deconflicting with the government's  
9 separate investigation.

10 Q. What does that mean, deconflicting?

11 A. Well, I think it means if, as was the case here, you had  
12 an internal -- a company conducting an internal investigation  
13 and at the same time the government also conducting an  
14 investigation into the same conduct or similar overlapping  
15 aspects of conduct, that the company would try and make an  
16 effort to deconflict in the sense of not impede what the  
17 government was trying to do.

18 Q. So deconfliction means trying not to impede what the  
19 government is trying to do?

20 A. I think essentially yes.

21 Q. So you respond to that and say, "We appreciate that and it  
22 is the company's decision."

23 What did you mean by that?

24 A. Well, I acknowledged -- I think I was acknowledging what  
25 he was saying and what they had tried to do. But, again,

1 noting that at the end of the day that decision is the  
2 company's decision in weighing that calculus of trying to  
3 remediate and mitigate and -- which includes terminating people  
4 perhaps and also trying to seek cooperation credit with the  
5 government by ensuring that they're available if the government  
6 is trying to seek access to them.

7 Q. Right. In order to receive cooperation credit?

8 A. I can't think of another reason why a company would do  
9 that other than trying to get cooperation credit.

10 Q. Got it. In fact, the next two lines -- I just want to ask  
11 about those. It says, "KR: In cooperation, that is a key  
12 distinguishing factor."

13 KR, I think is -- if you can check your first page,  
14 but I think it's Kathy Reummller, who is one of the attorneys  
15 for Cognizant, right?

16 A. That's correct.

17 Q. And then Doug Greenburg, who I think was also a Latham  
18 lawyer, said, "We've all seen cases where people are terminated  
19 right away and that can impede an investigation."

20 Do you see that?

21 A. Yes.

22 Q. Do you agree with that?

23 A. Yes. I think I had seen other internal investigations in  
24 my own experience, and I know many of my colleagues, where  
25 people we would have liked to have talked to had already been

1 terminated, and it made it very difficult, if not impossible,  
2 to speak to them, especially if they were overseas in  
3 jurisdictions where it would be impossible or difficult to talk  
4 to them.

5 Q. So what the lawyers for Cognizant, Mr. Bruck and  
6 Ms. Reummller and Mr. Greenburg, are saying to you here is they  
7 did not terminate people so that the government would have  
8 access to them and they should be given cooperation credit for  
9 that, correct?

10 A. I believe that's correct.

11 Q. Well, you know that's correct? I mean, that's the reason  
12 they were pointing that out, right?

13 A. Well, I only say I believe because I couldn't put myself  
14 in their heads. But this is a fair reading, and common sense  
15 seems to indicate that. So correct.

16 Q. And you were there; so you knew that that's what they were  
17 trying to argue, right?

18 A. Yes.

19 Q. So the bottom line I'm trying to get at here is, by  
20 holding off on terminating Mr. Schwartz so that they could get  
21 a second interview of him, that was something that was very  
22 helpful to the government, correct?

23 A. By holding off on terminating Mr. Schwartz, that was  
24 something that was helpful to the government. I don't --

25 Q. Let me withdraw the question and make it clearer.

1 A. Okay.

2 Q. Assume for purposes of this question -- because you don't  
3 know, as of September 23rd, Cognizant had made the decision  
4 whether to terminate Mr. Schwartz or not.

5 A. Yeah, I did not know that.

6 Q. We can tie that up with other witnesses.

7 The question is if they had intended to terminate him  
8 by then but didn't do so in order that he would be interviewed  
9 a second time, that really helped the government, didn't it?

10 A. I don't know if I would say that that really helped the  
11 government. I mean, you're asking me to sort of hypothesize on  
12 what would have happened if they would have terminated him. I  
13 don't --

14 Q. I'm not really asking you to hypothesize. I'm asking you  
15 for your experience. I think you said a few minutes ago that,  
16 if they had terminated him, he would likely not have been  
17 accessible for an interview, right?

18 A. Well, I was speaking in terms of foreign witnesses. I  
19 don't know that -- I mean, he had an attorney. So presumably  
20 perhaps he would have been unwilling to speak to us, but --

21 Q. Well, let me ask this question.

22 A. Sure.

23 Q. Were you aware that, if he did not submit to a second  
24 interview, he would have been fired? Is that something you  
25 were aware was Cognizant's policy?

1 A. I don't know that I was specifically aware that it was  
2 Cognizant's policy, but that's most companies' -- many  
3 companies' policies; so I don't think I would have been  
4 surprised to know that, or I probably assumed it.

5 Q. So by submitting to that interview, he generated evidence  
6 that you said a little while ago was important evidence for the  
7 government, right?

8 A. Yes.

9 Q. And, therefore, evidence that would not have been  
10 available if he had not been interviewed and had been fired,  
11 right?

12 A. Presumably, yes.

13 Q. And that would not have been available if he had been  
14 fired as was intended -- assume that -- before that interview.

15 A. If that's true, then yes.

16 Q. Okay. I want to go back to the October 6, 2016, meeting.  
17 So as we discussed a little while ago, right from the outset a  
18 meeting was going to be scheduled between the DLA team and the  
19 DOJ team. Originally it was December -- I'm sorry --  
20 September 27th. It got pushed off until October 6th based upon  
21 complications in Cognizant's or DLA's investigation.

22 Remember we talked about that?

23 A. Yes.

24 Q. And you don't know what those complications were?

25 A. I don't recall what those were.

1 Q. So what was -- this is now October 6th. It's about a  
2 month after you've gotten involved with the case. What was the  
3 purpose of that meeting?

4 A. I think that was our initial kickoff meeting to learn  
5 about what the case was even about.

6 Q. So for the month of September -- you're already involved  
7 in the case -- until October 6th when you had this meeting,  
8 it's your testimony you didn't know what the case was about?

9 A. Well, I mean, I knew generally what it was about, but I  
10 didn't know further details beyond what you see in those  
11 September 14th notes.

12 Q. But you were aware that during that month of September  
13 that Cognizant was continuing its internal investigation of the  
14 issue, right?

15 A. Yes.

16 Q. So for that meeting, do you recall who set the agenda for  
17 that meeting?

18 A. Who set the agenda?

19 Q. Yes, the government or Cognizant?

20 A. I mean, Cognizant had reached out to us in their  
21 self-disclosure. So I believe they set the agenda on what they  
22 wanted to share with us.

23 Q. I'm going to read to you from the government's brief. You  
24 said you looked at the briefs in this matter?

25 A. Well, I skimmed them. I wouldn't be able to answer

1 specific questions about them.

2 Q. Let me give you a quote and see if this rings true.

3 "Cognizant summarized evidence it had discovered of  
4 the \$2 million bribery scheme that ultimately formed the basis  
5 for the charges in the indictment and the key individuals  
6 involved, including Coburn and Schwartz, and also provided a  
7 binder of documents that it referenced during the  
8 presentation."

9 This is with reference to October 6.

10 Does that ring a bell as to what happened on  
11 October 6th?

12 A. That sounds right.

13 Q. Do you remember a binder of documents being provided?

14 A. I don't specifically remember a binder, but in almost  
15 every internal investigation like this, when the company came  
16 in for the first time, there was usually if not a binder,  
17 several binders.

18 Q. And whether there were one or several binders, the  
19 contents of those binders was selected by Cognizant, right?

20 A. Yes.

21 Q. That is, by their counsel, correct?

22 A. Correct.

23 Q. Do you remember at the time whether there was some  
24 discussion about how they had selected the documents that they  
25 had?

1 A. I don't recall having that discussion, no.

2 Q. I'm going to show you -- take a look at D-18. Let me know  
3 if you have seen this before.

4 A. This doesn't look familiar to me.

5 Q. I'll represent to you that these are actually talking  
6 points that were developed by DLA for the meeting. But you've  
7 never seen those before?

8 A. I've never seen this before.

9 Q. Thank you.

10 I want to ask about whether something that's in these  
11 notes is what happened at the meeting. So let me direct your  
12 attention to the top of page 3 of 9, Section C.

13 It says this: "Cognizant self-reported on  
14 September 1st. We've had a number of conference calls since we  
15 reported. We've shared with you key points from witness  
16 interviews, Steven Schwartz's notes from the April 22nd, 2014,  
17 conference call" -- which you mentioned a little while ago --  
18 "personal email and identifying information for a number of  
19 Cognizant associates" -- which you mentioned a little while  
20 ago -- "upcoming interviews" -- and I think you've testified  
21 that Cognizant was providing information about upcoming  
22 interviews. Is that true for you?

23 A. I think they were telling us who they were planning to  
24 interview.

25 Q. -- "information about witnesses and their counsel."

1                   I want to focus on the first one that says, "Key  
2 points from witness interviews."

3                   At that meeting on October 6th, did Cognizant provide  
4 you with key points on the witness interviews that they had  
5 done?

6 A.    I believe they did.

7 Q.    And they selected what those key points were, right?

8 A.    Yes.

9 Q.    Did you ask at that time for memos of the whole interviews  
10 or something so you could tell whether what they were providing  
11 were, in fact, the most important points?

12 A.   I wouldn't have asked for memos because those would have  
13 been privileged and DOJ policy is we can't ask for  
14 privileged -- ask the company to waive privilege. So, no, I  
15 wouldn't have asked for memos.

16 Q.   Well, you say that they would be privileged. Let me just  
17 follow up on that. If Cognizant is telling you about the  
18 interviews, you're saying that the interview memos or notes  
19 themselves are nonetheless privileged?

20 A.   If Cognizant is telling me about the interviews and giving  
21 me facts, then I don't think that necessarily means that the  
22 memos themselves would -- wouldn't be privileged.

23 Q.   So you wouldn't have any concern that the privilege, once  
24 they were telling you some things about the interview, had been  
25 waived so that they could give you an accurate, complete

1 recount of the interviews?

2 A. I apologize. Someone coughed. Can you repeat the first  
3 part of that.

4 Q. It was a lousy question anyway.

5 So Cognizant is giving you facts, key points from the  
6 interviews, right?

7 A. Yes.

8 Q. And you say that you wouldn't ask for the whole interview  
9 memos because you would be concerned that those are privileged?

10 A. Correct.

11 Q. And when you do that analysis of whether they are or not  
12 privileged, you consider that they provided you with some facts  
13 but not all of the facts regarding those interviews?

14 A. Yes.

15 Q. So my question is why did you, or somebody from DOJ if you  
16 have all talked about it, not challenged whether they could  
17 assert privilege with regard to the whole of those interviews  
18 as opposed to just providing their selected key points?

19 A. Well, as I'm sure was true in this case, every internal  
20 investigation that I'd done with not just this district but any  
21 other district in the U.S. Attorney's Offices, we all  
22 presume -- not presumed -- we understood, and often the company  
23 would be very explicit with us, that those memos were  
24 attorney-client privileged and work product. So we would find  
25 other ways to try and pressure-test things that they were

1 telling us without asking them to waive privilege over those  
2 materials.

3 Q. With regard to the key points that they raised at the  
4 October 6th meeting, what did you do to pressure-test, to use  
5 your phrase, what they were telling you to make sure that it  
6 was a complete, fair presentation of what had actually been  
7 said at those meetings?

8 A. Well, I don't know that there would have been anything in  
9 this specific meeting because it was essentially a kickoff  
10 meeting. I think at this point we're in receive, you know,  
11 listening mode, trying to understand the universe of the facts  
12 of what Cognizant had uncovered and just trying to get our  
13 bearings and just -- so basically just trying to understand  
14 what this case was about.

15 Q. So in trying -- let me ask you this: In trying to  
16 understand what the case is about, if Cognizant is reporting on  
17 interviews, as a good DOJ attorney in the FCPA area and the  
18 vast experience that you had in the criminal field, you would  
19 really want to know whether those key points really accurately  
20 represented what the witnesses had been told, wouldn't you?

21 A. Yes.

22 Q. So my question is, when they gave you the key points, did  
23 you question them at all to make sure that those were the  
24 correct key points and that they fairly and accurately  
25 summarized what the interviews were?

1 A. Well, I guess my answer -- I don't mean to repeat my  
2 answer, but I think in that meeting I don't know that we would  
3 have pushed back. I don't know that it would have been the  
4 appropriate time. But certainly at some point the company  
5 started producing documents and we started conducting our own  
6 investigation in earnest. And so we would have the facts that  
7 they gave us, and we would assess them in light of our own  
8 investigation to figure out whether those were, in fact, key  
9 points.

10 Q. Okay. But at least as of October 6th, you accepted those  
11 key points as the key points based upon the people -- what you  
12 were being told by the people who were doing the investigation  
13 at that point, right?

14 A. At that meeting I was not in a position to challenge what  
15 were or were not key points; so I was just listening to what  
16 Cognizant was telling me.

17 Q. Okay. Let me show you the next exhibit, which this is  
18 Exhibit 19.

19 A. Okay.

20 Q. Take a look at the first page of it, and I'll direct you  
21 to another place.

22 These are the paralegal notes from the -- from that  
23 same October 6th meeting. Do you see that?

24 A. Yes.

25 Q. And have you seen these before?

1 A. Yes.

2 Q. Directing your attention to the fourth and fifth page of  
3 the document, so Bates Numbers 21 and 22. Starting at the  
4 bottom of page 4, Bates Number 21, let me go through these  
5 questions with you.

6 "Government: Did you have these notes" -- these were  
7 with reference to the notes that you were told about on  
8 September 14th -- "when you spoke to Schwartz?"

9 Do you know where it says "Gov" there who was asking  
10 those questions?

11 A. I don't. It's someone from -- it's either Oz or myself  
12 or --

13 Q. Let's see who was -- I don't know that we know who was  
14 present at that meeting.

15 A. Okay.

16 Q. And DLA says, "Yes, the second time. We spoke to him a  
17 second time with the notes last Friday, I think. We did with  
18 counsel before the president resigned."

19 Then there's a discussion of Mr. Schwartz's -- what  
20 Mr. Schwartz said at that interview.

21 Do you see that?

22 A. Yes.

23 Q. And then where it says "Brackett," that refers to  
24 Brackett Denniston that was one of the attorneys for Cognizant.

25 Do you see that?

1 A. Yes.

2 Q. Did you interact with Mr. Denniston in regards to this --

3 A. I remember him from a couple meetings early on, but then  
4 he -- that was sort of it.

5 Q. And you'll see that Mr. Schwartz is saying that he did not  
6 have a good memory of a call in April 2014 because he had had  
7 surgery that week.

8 Do you see that?

9 A. Yes.

10 Q. And you recall that was something Mr. Schwartz had said,  
11 right?

12 A. In the second interview, correct.

13 Q. Right. And it says, "Gov: Was he out any days after the  
14 surgery?"

15 And DLA says, "There's emails that shows he was doing  
16 normal business on the 24th," which is a little bit later.

17 Government asks who his counsel is, and then  
18 government asks what's his current status.

19 "He's on home leave, on paid leave. His access to  
20 things have been terminated.

21 "Brackett: Our preferred course is for him to resign  
22 or we'll terminate."

23 DLA says, "We do want to do an additional interview  
24 with him and have asked for medical records for this alibi."

25 So I want to just ask you about that statement. "We

1 do want to do an additional interview with him." This comes  
2 after a statement about "our preferred course is for him to  
3 resign or we'll terminate."

4 I take it that that's just another embodiment of what  
5 we were talking about earlier, which is if he resigned or was  
6 terminated, they might not get that next interview.

7 A. I apologize. You said it's another -- I missed the first  
8 part of what you said. It's another?

9 Q. It's another example of what we were talking about  
10 earlier.

11 A. Correct, yes.

12 Q. Then it says, "We do want an additional interview with him  
13 and have asked for medical records for this alibi."

14 What did you understand DLA was doing there?

15 A. I'm going to take this to mean that DLA was trying to  
16 interview him again and trying to get medical records to either  
17 corroborate or not his alibi.

18 Q. And that too would have been of enormous assistance to the  
19 government, right?

20 A. Assuming we got that information, then that would  
21 certainly be relevant to the government's investigation.

22 Q. So what I really want to ask about is the very next  
23 sentence --

24 A. Okay.

25 Q. -- which says, "Gov: Have we exhausted everything around

1 him not remembering?"

2 Any idea who Gov is there?

3 A. Again, it was either Oz or me or, if the SEC was there,  
4 someone from the SEC.

5 Q. It says "have we exhausted." That sounds like you're  
6 talking about "we" as in the government and counsel for  
7 Cognizant, right?

8 A. That's certainly an interpretation of it.

9 Q. Well, I'm asking -- it can be an interpretation of it. Is  
10 it the correct interpretation of it?

11 A. I don't think it's the correct interpretation of it  
12 because we were clearly on separate teams; so --

13 Q. Right. But we -- at this point the only ones who were  
14 doing this work, as they've just said, is Cognizant, right?

15 A. Correct.

16 Q. This is well before there were any interviews conducted by  
17 the DOJ, right?

18 A. Correct.

19 Q. And it's well before, even further before, DOJ issues any  
20 subpoenas, right?

21 A. Correct.

22 Q. Right. So when you say -- when the government says "we"  
23 and they're talking about exhausting everything around him not  
24 remembering, what they're talking about is that the efforts  
25 that Cognizant is going to make to exhaust everything around

1 him not remembering, right?

2 A. I mean, it could be. First of all, these are paralegal  
3 notes; so I don't know exactly how accurate they are. But even  
4 assuming they are, it could be just a misstatement if that's,  
5 in fact, what someone said. Yeah.

6 Q. So you think that a government lawyer saying "have we  
7 exhausted everything," talking about Cognizant's actions, in  
8 saying "we" is somehow a misstatement?

9 A. Well, it would have been a misstatement because they were  
10 conducting their own investigation and we were going to conduct  
11 our own.

12 Q. At this point they're doing the investigation and you're  
13 receiving information about it, right?

14 A. This is October 6th?

15 Q. Yes.

16 A. Yeah, I think that's fair to say.

17 Q. And, I mean, isn't it fair to say that at this point you  
18 really are working together? Isn't that what you were doing?

19 A. No, I wouldn't say that.

20 Q. Okay. You would not say that what Cognizant was doing was  
21 working with the government in an effort to obtain leniency at  
22 this point?

23 A. I wouldn't say they were working with the government. I  
24 think they were like a cooperator who has come in and has tried  
25 to provide us -- provide the government with information and

1 the government is taking that information, conducting --  
2 assessing it and making its own independent judgment and  
3 conducting its own investigation.

4 Q. Well, at this time the government is not conducting any  
5 investigation?

6 A. Well, actually, if I said that, I misspoke. I wouldn't  
7 concede the government is not conducting any investigation at  
8 this point.

9 Q. Okay. Tell me, October 6th, a month after you're into  
10 this case, what was the government doing by way of conducting  
11 an investigation?

12 A. Well, I don't recall specifically what we did, but  
13 certainly we would have taken steps. I think the reason --  
14 there was a reason we were asking for personal email addresses.  
15 We were making our own assessment about if there were any sort  
16 of immediate steps that we needed to take. Again, we're  
17 talking about a matter of weeks. So I don't know that there  
18 was a whole lot that we could have done because, frankly, we  
19 didn't even know a lot about the case.

20 Q. When the government says "have we exhausted everything  
21 around him not remembering," right after DLA said they were  
22 going to do another interview and get medical records, isn't  
23 that providing some direction to them that they should exhaust  
24 everything around him not remembering?

25 A. I wouldn't -- I wouldn't say that that's direction, no.

1 Q. Okay. What would you say that is? Just a suggestion?

2 A. I mean, I think it was a question, asking what they've  
3 exhausted. And if that's an accurate reflection of the use of  
4 the word "we," then that's an unfortunate misstep.

5 Q. And if they're asking a question about whether it's been  
6 exhausted, you don't think implicit in that, when that's said  
7 to a company that's seeking leniency, ultimately a declination  
8 letter, that it gives them a suggestion as to what they should  
9 do next?

10 A. Well, I can't speak for what the company's interpretation  
11 would be. I knew that we were not to direct the company's  
12 investigation. My AUSA partner knew that as well. And that's  
13 something that wouldn't have happened. So we weren't directing  
14 them.

15 How the company interpreted it, I can't control. But  
16 we were -- this example of notwithstanding or -- and perhaps  
17 there are others because we're not perfect, we're usually  
18 trying to be very careful not to cross a line and be perceived  
19 as directing the company to do something.

20 Q. But you would agree that, assuming that this is correctly  
21 quoted, there could be that perception that you're at least  
22 suggesting, if not directing, DLA as to what to do next, right?

23 A. Well, I think it would be a stretch to say that someone  
24 would interpret it as direction, but how they interpreted it,  
25 if they thought it was a suggestion and how strong they thought

1 that suggestion would be, I can't control and I wouldn't know.

2 Q. So following that October 6 meeting, I want to -- later  
3 that day you have a follow-up question. Just to refresh your  
4 recollection on that, let's take a look at Exhibit 21.

5 I want to make sure I get the right one. So on  
6 October 6, so on the first page --

7 A. Okay.

8 Q. -- there's an email from you which looks like it's to the  
9 DLA team. I can't tell exactly who, but it's in response to an  
10 email from Mr. Buch.

11 By the way, it says Mr. Buch's title there is foreign  
12 legal consultant. Did you have an understanding about what  
13 that meant?

14 A. I never understood what that meant.

15 Q. So it says that -- there's a discussion that says, "Karl,  
16 I know you're in transit tomorrow, but do you all have time for  
17 a follow-up call with us tomorrow? We have some requests we'd  
18 like to make."

19 Do you see that?

20 A. What part of the page?

21 MR. LUSTBERG: Can you show that, Jesse?

22 He's very good.

23 A. Oh, I see it. Yes, I see it.

24 BY MR. LUSTBERG:

25 Q. Do you know what requests you were making following that

1 meeting?

2 A. I don't.

3 Q. No idea?

4 A. I don't remember.

5 THE COURT: I'm sorry. This email is from who to  
6 who?

7 MR. LUSTBERG: Okay. So this email is from  
8 Mr. Gingras here back to counsel at DLA. It's part of a chain  
9 between them following the October 6th meeting.

10 There's a discussion -- it's not particularly  
11 relevant -- with regard to the confidentiality agreement, and  
12 then this is an example of the government having some requests  
13 to make to DLA at that time.

14 THE COURT: Oh, there it is. I'm sorry. The top was  
15 cut off on my screen.

16 BY MR. LUSTBERG:

17 Q. Then just one more follow-up finding -- following the  
18 October 6th meeting. A call ends up getting scheduled for  
19 October 17th, a little bit more than a week later, to discuss  
20 documents and other items.

21 The government has told us that they have no record  
22 of that call, but DLA has some talking points for that day that  
23 I just want to show you to see whether this refreshes your  
24 recollection or whether you can tell me whether there was a  
25 call on October 17th.

1                   So take a look at Defendants' Exhibit 23.

2   A.    Okay.

3   Q.    And my question for you is do you recall having a  
4   discussion on October 17th about -- and you can just look at  
5   pending DOJ requests, whatever you need to do to look at it.

6                   Do you recall a call on October 17, 2016, addressing  
7   these subjects?

8   A.    I don't, no.

9   Q.    It says "Pending DOJ requests." So let me see if I can  
10   try that way.

11                  It says, "Additional emails/hot docs relating to the  
12   \$2.5 million payment."

13                  Do you know what that's a reference to?

14   A.    So I don't recall specifically, but it seems like it's  
15   a -- we had asked for additional emails going to the  
16   \$2.5 million payment.

17   Q.    Let me focus on the phrase "hot docs." Do you know what  
18   that's a reference to?

19   A.    I think that's a colloquial term that folks in your  
20   business and --

21   Q.    I've heard the phrase.

22   A.    -- term documents that are particularly relevant to a  
23   subject.

24   Q.    Do you know whether -- had the government asked for,  
25   quote/unquote, hot docs from DLA?

1 A. I don't know that I would have used that term. I don't  
2 recall using that term.

3 Q. Okay. So if somebody else used the term and this says  
4 pending DOJ requests and had requested hot docs, what they're  
5 saying is to -- tell me if you think I'm wrong here -- that DLA  
6 should select the, to use your phrase, documents relevant to  
7 the issue, right?

8 A. I mean, you're asking me to speculate if someone asked for  
9 hot docs --

10 Q. No, no -- yeah. So let's assume --

11 A. Okay.

12 Q. -- because of this that there was a pending DOJ request  
13 for hot docs.

14 A. Okay.

15 Q. That is, in fact, a request for Cognizant to select the  
16 most relevant documents, right?

17 A. If that's the term they used, that seems like a fair  
18 interpretation.

19 Q. Do you remember a discussion at any point with Cognizant  
20 as to how they should go about selecting hot docs?

21 A. I don't remember specific discussions about how they  
22 should select documents, hot docs or otherwise. I'm sure we  
23 did. I know we had discussions -- I sort of generally have  
24 recollections about sort of parameters and categories of  
25 information that we were seeking.

1                   So if we were asking for specific documents around,  
2 for example, the payment or other transaction or something else  
3 in question, I remember making those requests.

4 Q.    I'm sorry. You remember making requests of -- I just want  
5 to -- you remember making requests for what?

6 A.    For documents that were -- that had to do with certain  
7 transactions or categories of topics at given times.

8 Q.    And this was obviously during the time period before the  
9 government subpoenaed documents, because if you were  
10 subpoenaing documents, you wouldn't have to make those  
11 requests; you could just subpoena them, right?

12 A.    Right. Although even with the subpoena, we would usually  
13 sort of have a back-and-forth -- at least my experience has  
14 been that there's a back-and-forth about what categories of  
15 documents and what the subpoena means and what we're trying to  
16 get. So yes.

17 Q.    When you had conversations yourself that you're recalling  
18 with Cognizant with regard to certain categories of documents  
19 that you were interested in, was that before you issued -- the  
20 subpoenas were issued?

21 A.    I don't recall.

22 Q.    And the fifth point here says, "Coordinate Mani interview  
23 in mid-November."

24                   Do you recall any conversation about coordinating  
25 with DLA with respect to an interview of Mani in mid-November?

1 A. So I'm sorry to keep saying I don't recall, because this  
2 was quite a bit ago, but I certainly remember having  
3 conversations about trying to get access to Mani to interview  
4 him. I don't remember -- I mean, I think we would have tried  
5 to interview him very quickly, but I don't remember this  
6 specifically.

7 Q. So you were having conversations with counsel for DLA  
8 about getting access to Mani as quickly as possible; is that  
9 right?

10 A. Well, I mean, as quickly as possible -- we were trying to  
11 get access to him. He was one of the first people we wanted to  
12 talk to.

13 MR. LUSTBERG: Judge, I don't know when you were  
14 intending to take a morning break.

15 THE COURT: Would this be a good time?

16 MR. LUSTBERG: It's a little after 11:00. I'm  
17 halfway through, maybe even more. It would be a good time to  
18 break.

19 THE COURT: Okay. Good. Let's take our 15-minute  
20 morning break.

21 Do me a favor. One counsel for each just step up for  
22 a moment about scheduling. It doesn't need to be on the  
23 record.

24 (Recess taken 11:10 a.m. through 11:25 a.m.)

25 THE COURT: Let's resume.

1 BY MR. LUSTBERG:

2 Q. I walk around too much; so they made me do one of these  
3 mics.

4 Mr. Gingras, we talked about the question about  
5 whether the government gives direction or suggestions or  
6 whatever to a party like Cognizant that's reporting activity.  
7 And you said that that's not something that you do, right?

8 A. Correct.

9 Q. I think you said that you know that the U.S. Attorney's  
10 Office for the District of New Jersey also knew that they  
11 shouldn't be doing that either, correct?

12 A. That's my recollection, correct.

13 Q. Well, did you speak to Oz or Andrew Bruck or someone else  
14 from the U.S. Attorney's Office in New Jersey about that  
15 subject?

16 A. I don't recall having a specific conversation with them  
17 about it, but I know that we talked at times -- and it has  
18 happened in a lot of other investigations -- where we would  
19 make sure that we were all being careful about not directing a  
20 company to do certain things which would be inappropriate.

21 Q. Okay. I'm sorry. Did you say you had those conversations  
22 in this case?

23 A. What I said is I don't recall specific conversations, but  
24 I do -- I do recall sort of generally us talking about being  
25 careful in how we were phrasing our questions.

1 Q. Okay. So I want to understand that. Careful in phrasing  
2 your questions.

3 So there's no -- there's no dispute, right, that you  
4 would ask questions of the -- of Cognizant lawyers, right?

5 A. Correct, and make requests.

6 Q. And made requests. And we'll talk about a couple other  
7 things along those lines.

8 I guess my question is how do you -- you talked about  
9 phrasing. How do you phrase a request -- let's take requests  
10 first -- in a way that does not end up constituting direction?

11 A. When I say phrasing, I just mean that it was my  
12 practice -- and I think it was our practice as a team -- to be  
13 thoughtful about requests that we made from the company.

14 Again, the company can interpret things in a number  
15 of different ways, but we didn't ever want to be crossing a  
16 line into giving direction or -- we're talking about direction  
17 now, but there are sort of other contexts too where you want to  
18 be careful because it's not within our purview to be telling  
19 the company what to do.

20 Q. Okay. So let me just ask about a couple of examples in  
21 response to that.

22 You requested, did you not -- and I can show you a  
23 document if you need to -- that you requested that Cognizant  
24 assist you in terms of finding experts on some Indian  
25 contracting processes, right?

1 A. Yeah. I remember asking the company to help us find an  
2 expert in the Byzantine process of permitting in Tamil Nadu in  
3 India.

4 Q. If you could, what specifically do you recall what you  
5 asked Cognizant to do for you with regard to locating experts?

6 A. Well, I remember -- I recall that we were having trouble  
7 finding an expert in this field. We had asked OIA. I recall  
8 asking the State Department. I even did googling online.

9 It was tough to find. So we asked the company who  
10 had -- who's experienced in real estate dealings over there or  
11 asked DLA to see if they could find people that would be  
12 suitable for us to consider as expert witnesses.

13 Q. And let me ask you. In your experience, is that a normal  
14 request to make of a company that comes forward in an effort to  
15 self-report, that you would ask them -- let me withdraw that.

16 The purpose of finding that expert was to assist you  
17 in your investigation, right?

18 A. Correct.

19 Q. And potentially to even testify at trial if it came to  
20 that, right?

21 A. Conceivably.

22 Q. So my question is, is it common in your experience to ask  
23 a company that comes forward to assist in those ways?

24 A. I don't know whether it's common or unusual. I don't  
25 recall doing it in another case.

1 Q. Looks like you may have also asked one of them to assist  
2 you in finding an expert with regard to certain IT issues, for  
3 example, with regard to the Tandberg communications platform  
4 that Cognizant used. Do you recall asking them for assistance  
5 in that regard as well?

6 A. Yeah. I think we were trying to understand how their IT  
7 infrastructure worked, including the Tandberg, which is, I  
8 think, the phone system that they were using that some of the  
9 calls in question took place on. So we had asked the company  
10 for assistance in helping us identify someone who could explain  
11 that to us.

12 Q. So that would have been somebody internal to Cognizant  
13 that you were asking for, right?

14 A. Yes.

15 Q. But the other expert that we talked about, somebody with  
16 regard to the permitting process in Tamil Nadu, that would have  
17 been a third party outside that you were asking them to help  
18 you to find because you couldn't -- which I would try to find  
19 one on Google.

20 A. Well, yeah, it was tough. As I'm sure you know, when  
21 you're trying to determine experts, you want to have a slate to  
22 choose from. And so assembling a number of experts that we  
23 could evaluate and figure out who could help us, it was  
24 challenging.

25 So like I said, we went down other avenues. We also

1       asked the company to help us -- if they could help us identify  
2       someone to consider.

3       Q.     Isn't it also the case -- and, again, just following up on  
4       the questions and answers that we had earlier with regard to  
5       providing direction.  Is it also the case that you requested  
6       that Cognizant assist you with doing certain forensic analyses?

7       A.     I don't recall that specifically, although that sounds  
8       vaguely familiar.  I think in investigations, when we're trying  
9       to make an assessment of information that's been given to us,  
10       there's obviously a forensic analysis that needs to be done.  
11       We will do some, but sometimes we'll ask the company to give us  
12       a sort of understanding of their forensic analysis perhaps  
13       first.  So we may have asked them to do that.

14       Q.     So the specific forensic analysis, as I understand it,  
15       that you requested they do here had to do with whether certain  
16       emails or any emails had been deleted.

17               Does that ring a bell as to what you might have asked  
18       them to do?

19       A.     If you have specific documents to point me to.  It doesn't  
20       sound totally unfamiliar, but I don't recall specifically  
21       asking them to do that.

22       Q.     Sure.  Let's take a look at Exhibit 43.  Now, this might  
23       not -- hold on.  That might not be the best one.

24               Yes.  Let's take a look at Exhibit 44.  On 44 -- 44  
25       is notes -- is this when you were still there?

1 A. No. This is after I left in June of 2018.

2 Q. Fair enough. So I won't ask about those.

3 You nonetheless -- do you have any recollection of  
4 asking Cognizant to look into whether they could do an analysis  
5 of whether emails had been deleted?

6 A. Like I said, I have a vague recollection. And I don't  
7 know if that's because I've seen reference to it in the briefs,  
8 but I don't -- I don't have a specific recollection of asking  
9 them to do that.

10 Q. How about with regard to chain of custody of certain  
11 materials that were turned over? Did you ask Cognizant to do  
12 any chain-of-custody analysis with regard to, for example,  
13 Mr. Schwartz's computer?

14 A. I don't recall it.

15 Q. Do you have -- and this may have been after your time --  
16 and if so, you'll tell me. Did it occur, during the time that  
17 you were there, that the government requested that Cognizant do  
18 an analysis of whether there was any *Brady* material in the  
19 information that had been provided?

20 A. Well, it certainly didn't happen when I was there.

21 Q. When you say it certainly didn't happen when you were  
22 there, why are you so sure about that?

23 A. Because I wouldn't have asked the company to do a *Brady*  
24 analysis.

25 Q. Why is that?

1 A. Because of that's my job as the prosecutor.

2 Q. Okay. In fact, because it's your job as a prosecutor, you  
3 probably keep a file from early on of materials that you think  
4 might end up being *Brady*, right?

5 A. I don't know if I would have kept a log or a folder or  
6 something if I would have seen any.

7 Q. Okay. Let me just go back.

8 Again, just with regard to your point about not  
9 providing directions, it was the case, wasn't it, that at times  
10 the government would provide guidance to Cognizant with regard  
11 to the sequencing of interviews. Does that ring a bell?

12 A. I don't recall inviting guidance on the sequencing of  
13 interviews. That would be surprising. I think the most --  
14 what we would have done -- and I don't remember doing it in  
15 this specific case, but we might at times ask a company to hold  
16 off on doing an interview if we wanted to do the interview  
17 first. We might ask the company to hold off on taking certain  
18 steps if we were trying to take our own steps.

19 But usually that was for a very limited time and it  
20 was not done without some trepidation because, again, we were  
21 trying to be thoughtful and cognizant of trying not to  
22 interfere in whatever the company was doing in its own  
23 investigation.

24 Q. Okay. Take a look, if you would, at Exhibit 26. And it's  
25 the last page, page 11, of that exhibit.

1                   Actually, before you do it, if you have it in front  
2 of you, if you could identify that -- what that exhibit is.

3 A. 26?

4 Q. Uh-huh.

5 A. Again, I think these are paralegal notes of a meeting.

6 Q. And it was a meeting that you attended, right?

7 A. Yes.

8 Q. Okay. So let's go to the last page.

9 A. Okay.

10 Q. It says -- in the second-to-last bullet point it says,  
11 "McLoughlin, Dana, Casari." And after Casari it says, "After  
12 DOJ speaks to him. Others will be interviewed December or  
13 later."

14                   Does that make it sound like you wanted the --  
15 Cognizant to talk to Mr. Casari after DOJ had spoken to him?

16 A. "Action Items." I apologize. Can I review this for one  
17 second?

18 Q. Sure.

19 A. Okay. Sorry. What was the question?

20 Q. So the question is, is this exactly what you were talking  
21 about, where this is a situation where the government said, you  
22 know, we're going to interview them first, then you can  
23 interview them later, right?

24 A. I don't -- I don't remember because this seems to indicate  
25 that they had already interviewed him and were telling us about

1 that interview. So I don't know if they were going to  
2 interview him again.

3 Q. So it says "Casari (after DOJ speaks to him)."

4 That makes it sound like there's a request that they  
5 hold off on speaking to him until after DOJ speaks to him. Am  
6 I reading that incorrectly?

7 A. I don't know if we had made a request or I don't know if  
8 they were telling us what they were going to do. And so I  
9 don't know what the --

10 Q. Okay. So this could be that they were just holding off on  
11 speaking to him of their own accord until after DOJ spoke to  
12 him; is that right?

13 A. It could be, or it could be we've asked them to --

14 Q. Right.

15 A. -- hold off because --

16 Q. Because you said -- sorry. I apologize. I didn't mean to  
17 talk over you.

18 A. Sorry. Go ahead.

19 Q. I think one thing you said before is that sometimes you  
20 would ask parties that were cooperating with you in this way to  
21 hold off on interviews, right?

22 A. Correct.

23 Q. In fact, that happened here as well with regard to  
24 somebody -- if I said T. Sridhar, do you know who that is?

25 A. I know the name; I don't remember who that is, though.

1 Q. So based upon disclosures from the government, we've been  
2 told that it wanted to interview him first before -- he's an  
3 executive at Cognizant -- before DLA did.

4 A. Okay.

5 Q. And that's the kind of thing you're talking about that  
6 does happen, right?

7 A. That sounds like it, yes.

8 Q. Again, in terms of providing direction to DLA as they did  
9 their job, there were times when DOJ would make requests about  
10 the way documents should be handled, about -- in particular  
11 about identifying documents that were being reviewed -- that  
12 would be reviewed with witnesses.

13 Do you remember having those conversations with DLA?

14 A. I recall asking -- we -- the team asking for documents  
15 that were shown to witnesses that were interviewed, yes.

16 Q. So if I understand correctly, what you're saying is that  
17 you would ask DLA to keep track of the documents that were  
18 being shown to witnesses so that you would know what they were,  
19 right?

20 A. Well, I don't know if we were asking them to keep track.  
21 I think every law firm that does this keeps track of a binder  
22 of documents that they have the interview with a witness. And  
23 so --

24 Q. Yes.

25 A. -- we would ask them to provide those to us before we

1 spoke to them.

2 Q. Let me just show you just along these lines Exhibit 27.

3 A. Okay.

4 Q. Again, we're just talking about the subjects we were  
5 discussing before. At the top there's a dialogue between you  
6 and DLA and Oz. I just want to see if I understand it.

7 It says -- so DLA says -- and by the way, do you know  
8 who -- just looking at this, this is February 14, 2017. It's  
9 after the time period but obviously relating back to what we  
10 talked about before.

11 On February 14th do you remember meeting with or a  
12 conversation -- a call, it looks like, with DLA on February 14,  
13 2017?

14 A. I don't recall the call specifically.

15 Q. It wasn't a big deal for Valentine's Day or anything?

16 A. Probably not.

17 Q. Wouldn't have been for me either, but don't tell my wife.

18 Anyway, it says, "Sridhar's testimony has evolved and  
19 his memory has gotten better."

20 Do you remember what that was about?

21 A. I don't remember specifically what it was about. I think  
22 it's clearly about their -- they'd interviewed Sridhar more  
23 than once and that his testimony had changed or his statements  
24 had changed and his memory had been refreshed.

25 Q. Let me make sure I understand. So what you're saying is

1 that, through the course of these various interviews with DLA,  
2 Mr. -- well, it's not his last name, which I can't pronounce,  
3 but Sridhar's --

4 THE COURT: We're getting a little far afield here,  
5 sir.

6 MR. LUSTBERG: Well, no, this goes to the  
7 direction --

8 THE COURT: It's not a deposition. Let's -- we're  
9 talking about the issue of domination or not of the company by  
10 the government, and the ins and outs of --

11 MR. LUSTBERG: You're right. So I'll get off this  
12 Sridhar piece.

13 BY MR. LUSTBERG:

14 Q. But the point I really wanted to talk about here was the  
15 documents. And this is just what we were talking about before.  
16 Where it says KG, that's you. "It would be helpful to keep  
17 track of what is being shown to him for the first time."

18 Do you see that?

19 A. Correct.

20 Q. And so that's what you were referring to earlier, that you  
21 said you weren't so sure that you told them to keep track, but  
22 this looks like you're telling them to keep track, right?

23 A. I think what I may have meant is the documents that he was  
24 seeing for the first time, specifically, if he hadn't seen them  
25 before, or it could be just asking them to keep track.

1 Q. Why the documents that he's seeing for the first time?

2 A. Well, if I'm interviewing a witness, I would just want to  
3 understand what they'd said in other contexts and what their  
4 answers would have been. And especially if he's talking about  
5 his answers changing or his recollection getting better, I  
6 think I might have just been trying to piece together what was  
7 it that was jogging his memory if he was seeing something for  
8 the first time.

9 Q. And then just a little bit later -- and I'm just going to  
10 direct your attention to this exhibit just to do it quickly.  
11 On Exhibit 28, page 2 of 6 at the top.

12 A. Okay.

13 Q. Now, the date on this is February 24th, 2017; so this is  
14 before the government has done their interviews, Cognizant is  
15 finishing up -- is doing theirs, right?

16 A. I don't believe we had interviewed anybody at this point.

17 Q. Right.

18 A. I think Cognizant was continuing to do interviews --

19 THE COURT: I'm sorry. Say that date again, please.

20 MR. LUSTBERG: It's February 24th.

21 THE COURT: February 24th.

22 BY MR. LUSTBERG:

23 Q. And you say to DLA, "Can we talk about it first if you're  
24 going to show documents that people may not have received?"

25 Do you see that?

1 A. Yes.

2 Q. Okay. So what did you mean by that?

3 A. Well, I mean, my practice as a prosecutor and  
4 investigator -- and I think most of my colleagues -- was to  
5 prefer to not show witnesses documents that they -- that they  
6 weren't -- they didn't either author or receive or they weren't  
7 cc'd or they hadn't seen before.

8 So that would certainly affect my own separate  
9 investigation when I was going to interview that witness. If  
10 that person had seen documents that they weren't on, I would  
11 want to know that. And I would want to understand how that  
12 played into the answers that they gave.

13 Q. But if I understand this question correctly, you're saying  
14 that, before they showed particular documents to people for the  
15 first time, you want to discuss it with them, right?

16 A. No, I said -- I think what I'm saying here is if they were  
17 planning to show documents that people hadn't received  
18 before --

19 Q. Uh-huh.

20 A. -- meaning they weren't sent to them or they weren't on  
21 them, that I would want to talk about that first. There may  
22 be -- again, not to direct the company what to do, but to,  
23 again, maybe ask the company to hold off on showing them that  
24 document or something like that.

25 But just to understand what they were planning to do

1 with that witness because that would have an effect on my  
2 investigation, my separate, independent assessment of that  
3 person's credibility and the answers that that person gave me  
4 when I spoke with that person.

5 Q. Got it. And that really goes to the question I'm asking,  
6 and then I'll get off this line, which is you say that's not  
7 direction, but it says, "Can we talk about it first if you're  
8 going to show documents that people may not have received?"

9 It sounds like you're giving direction to Cognizant,  
10 to their lawyers, as to how to handle these interviews in the  
11 sense of, before they show them a particular document, you want  
12 to see it first.

13 A. I wouldn't put it that way. I think I was asking can we  
14 talk about it first.

15 Q. Okay.

16 A. I was sincere in that. I don't think at this point DLA --  
17 you know, it had been several months. And I think any  
18 colleagues who've worked with me before would know that I say  
19 what I mean. So if I said can we talk about it, I meant can we  
20 discuss it.

21 Q. Before they show it to the witness?

22 A. Yes.

23 Q. So between the time you got involved in this case in  
24 September 2016 up until February 2017, Cognizant -- which had  
25 begun its investigation even before that, you knew -- had

1 already conducted numerous interviews, right?

2 A. I believe that's correct.

3 Q. Right. And, in fact, they conducted interviews of 44 of  
4 the 45 people that the government ultimately interviewed; is  
5 that correct?

6 A. I don't know if that's correct, but that doesn't sound  
7 impossible.

8 Q. Pardon me?

9 A. It doesn't sound impossible.

10 Q. It doesn't sound impossible?

11 A. Yes.

12 Q. Okay. And the way you found out about the interviews was  
13 through a process of downloads, right?

14 A. The -- yes. I mean, that's the term people used. The law  
15 firm would read out to us the facts that were uncovered of what  
16 a witness said in an interview.

17 Q. Okay. So how was it decided which downloads you would  
18 receive?

19 A. I can't remember specifically. I think at times there  
20 were sort of the obvious people that were relevant to the  
21 conduct that we were investigating, and we may have asked  
22 specifically for other people.

23 Q. So I just want to make sure I understand. So did  
24 Cognizant present certain witnesses for whom they would do  
25 downloads and then you supplemented them and said we want

1       others? Or did you request that they download to you specific  
2       witnesses?

3       A. I can't recall. It could have been a combination of those  
4       things. I just don't remember.

5       Q. All right. So did you ever check to make sure that you  
6       got downloads of all of the witnesses that they had interviewed  
7       to make sure that you understood the full scope of the  
8       investigation?

9       A. Well, I know they interviewed a lot of people that were  
10      part of other sort of offshoots of their investigation. I  
11      think it was pretty massive. And some we weren't interested  
12      in; so I don't think we would have asked for downloads for  
13      those witnesses.

14      Q. Do you remember ever asking for downloads -- specifically  
15      asking for downloads of witnesses that Cognizant had not  
16      provided?

17      A. I don't recall specifically. I imagine that we would have  
18      asked to hear about what people said. And I can't remember if,  
19      for example, Casari was one of those people. But I have a  
20      vague recollection; I just don't remember specifically.

21      Q. Okay. So based on the discovery we've seen, it looks like  
22      Cognizant did 450 interviews, and we have downloads for 45 of  
23      them.

24                    Do you know whether -- how many downloads you had?

25      A. I don't recall how many I had. It certainly wasn't 400.

1 Q. Would you be concerned -- if you knew there were a lot of  
2 interviews and that you weren't getting downloads of all of  
3 them, that you weren't getting the whole story?

4 A. No, not in this case because I think there were, like I  
5 said, a lot of -- there were a number of projects, a number of  
6 parts of the business that the company's internal investigation  
7 covered that I think the -- my AUSA colleague and I and the FBI  
8 determined we weren't specifically interested in.

9 So if there had been people that we had heard about  
10 or seen in emails when we were conducting our own review and we  
11 knew that those people were interviewed, then we would try to  
12 seek downloads of those people.

13 Q. And I think I asked this before. I apologize if I did.  
14 But when you would get a download, would you do anything to  
15 check to make sure that that download accurately reflected what  
16 the person had actually said?

17 A. Yes. I mean, I think, as best I can recall, that I  
18 would -- that we would -- you know, we were conducting our own  
19 investigation and reviewing the documents, documents we were  
20 getting from the company, from other sources. And so, I mean,  
21 I think we would evaluate downloads within that -- within that  
22 context.

23 I mean, of course we were eventually going to  
24 interview those people; so we were trying to get a full picture  
25 of what they said. And I think we might ask sort of specific

1       questions if we thought there were areas that we needed to  
2       follow up on.

3       Q.     Okay. There was one witness about whom we've received  
4       information named -- first name is Venkatesan, and this is  
5       during the time that you were there.

6                   So let me show you Defense Exhibit 31 -- I'm sorry.  
7       Yes, that will tell you who that is.

8                   Do you remember this witness?

9       A.     I'm sorry. Defense Exhibit 31?

10      Q.     Right.

11      A.     Oh, Venkatesan. No, I don't remember who this is.

12      Q.     So when you say you don't remember, is that because there  
13       was no download of this witness?

14      A.     No. I don't remember -- I don't know whether there was a  
15       download or not. I don't remember a lot of these names. It's  
16       been many years.

17      Q.     So we don't see a memo of a download, which may or may not  
18       mean anything, but you don't have a recollection of a download  
19       from this witness, Venkatesan?

20      A.     I don't remember a --

21      Q.     Okay. Okay.

22      A.     -- download.

23      Q.     In particular, let me see if you would remember it because  
24       this witness denied receiving bribe demands. This was the  
25       project manager for KITS, for the KITS Campus, which, as you

1 know, is the subject of the bribe, and denied the payment of  
2 any bribe and so forth.

3 You would remember if you had gotten that download,  
4 right?

5 A. Maybe. I recall that there were a number of people who  
6 were involved in the project who denied knowing anything about  
7 the bribes.

8 Q. Okay. So there were a number of people involved in the  
9 project who said they had no knowledge of the bribes?

10 A. I recall that there were certainly some.

11 Q. This is the project manager. Doesn't ring a bell at all?

12 A. I don't recall it.

13 Q. Okay. Thanks.

14 How about the downloads that you got of, let's say,  
15 Mr. Schwartz's interview, his September 23rd, 2016, interview?  
16 Do you remember receiving that download?

17 A. I know we did. I can't recall the specifics of it. I  
18 don't know if it was that October 6th meeting where we had the  
19 first meeting or if they went into more detail at a later time.  
20 Sometimes they would give us sort of just an overview, and then  
21 we would get sort of more detail on a separate occasion.

22 Q. Okay. I want to show you the interview memo with regard  
23 to that interview of Mr. Schwartz, which is Exhibit 57 in your  
24 binder.

25 MR. LUSTBERG: Don't put it up, please.

1 A. Okay.

2 BY MR. LUSTBERG:

3 Q. I take it you never saw this, right, because that's the  
4 kind of thing that you wouldn't ask for since you thought it  
5 would be privileged, right?

6 A. Correct.

7 Q. And my question is -- and directing your attention to  
8 page 5 of that.

9 MR. LUSTBERG: Again, please don't put it up.

10 BY MR. LUSTBERG:

11 Q. Sorry. The last paragraph on that page.

12 A. Okay.

13 Q. You see where it says that Mr. Schwartz had a call and  
14 said that he had reported up the information that's there in  
15 that paragraph, which I'm not going to say because this  
16 isn't -- it's not public.

17 A. Sorry. One minute.

18 Q. Yeah. Mr. Schwartz talked to members of the board with  
19 regard to this matter, indicated that he reported up what he  
20 had learned after Monday, August 8th, because of the amount at  
21 issue, the specificity, and the ongoing investigation.

22 Do you see that?

23 A. Yes.

24 Q. Was that information of which you were made aware by  
25 Cognizant?

1 A. It doesn't sound totally unfamiliar, but I don't recall  
2 specifically. I know that there was -- seem to recall them  
3 telling us that he had raised issues like this.

4 Q. When you say "raised issues like this," they told you that  
5 he had raised issues with regard to this transaction and, even  
6 though he's charged with it, that he had reported it up to  
7 people above him?

8 A. I don't remember this -- not this specific transaction. I  
9 guess what I'm saying is I remember them -- I guess I'm sort of  
10 confused with what the context is, what this actually is.

11 Q. Take a look. This is a section that says "Response to  
12 potential improper payments."

13 A. Okay.

14 Q. And this is a memo of the September 23rd interview that  
15 the government apprised you of.

16 What I'm asking you, do you remember them apprising  
17 you that, some time after a call on Monday, August 8th,  
18 Mr. Schwartz reported up what had occurred because of the  
19 amount an issue, the specificity, and the ongoing  
20 investigation?

21 Do you remember being told that by counsel for  
22 Cognizant?

23 A. Sir, what is the amount at issue?

24 Can I have one minute to just read this --

25 Q. Absolutely.

1 A. -- page?

2 Q. Sorry. Yes.

3 THE COURT: Listen, I get it, and I'll permit you to  
4 put in selected parts, but we've got to have an intelligible  
5 record here.

6 MR. LUSTBERG: Pardon me?

7 THE COURT: We've got to have an intelligible record  
8 here.

9 MR. LUSTBERG: Yeah.

10 THE COURT: This record cannot read, well, you see  
11 this thing over there? Well, did you know about that? Help us  
12 out a little bit.

13 MR. LUSTBERG: Okay. One second. Let me make sure  
14 this hasn't been redacted.

15 (Discussion off the record between counsel.)

16 MR. LUSTBERG: Judge, I can do this. I just wanted  
17 to make sure I wasn't doing something that had been redacted  
18 since we're in open court.

19 Jesse, if you can just pull up Exhibit 57, fifth page  
20 and the bottom paragraph.

21 BY MR. LUSTBERG:

22 Q. And it says, "Schwartz continued" -- at his interview --  
23 "that after the Monday, August 8th, call with Mani, Dana got on  
24 a call with Frank -- Francis D'Souza ("Frank"), chief executive  
25 officer, and Karen McLoughlin, chief financial officer,

1 followed by a call with the audit committee chair. Schwartz  
2 also spoke to all but one member of the board. In this case  
3 Schwartz indicated that he 'reported up' because of the amount  
4 at issue, the specificity, and the ongoing litigation [sic]."

5 My question to you is that, when you got the download  
6 of this information, was that information made available to  
7 you?

8 A. This doesn't sound totally unfamiliar to me. So I don't  
9 recall specifically, but -- and I guess my question is, is this  
10 about the \$330,000 demand? Is that what we're talking about  
11 that's earlier on the page?

12 Q. Yeah. I mean, you have the same information as I do.

13 A. Yeah. So, again, that sounds familiar to me; and so I  
14 think I heard it at some point, but I don't recall specifically  
15 when.

16 Q. Okay. And you don't recall whether it was specifically  
17 part of a download that you received from Cognizant?

18 A. I don't.

19 Q. Okay. Just to reiterate and ask a couple questions about  
20 this, and we're getting close to being done here.

21 The road map -- strike that.

22 We talked about the fact that Cognizant's counsel had  
23 interviewed all of the witnesses before the government did,  
24 correct? Except for one.

25 A. I don't know that, but I'll assume it, sure.

1 Q. Okay. Does that concern you that, by doing that,  
2 Cognizant will have -- in many cases, interviewing them more  
3 than once, will have influenced what they're going to say to  
4 you?

5 A. Sure. I mean that would be something I would take into  
6 consideration, absolutely.

7 Q. Uh-huh. And you would take it into consideration because  
8 it's possible -- not just possible that people, once they say  
9 things and say things multiple times, then they'll stick to  
10 that story, right?

11 A. Yes, stick to that story or change their story or any  
12 number of things.

13 Q. Right. Well, in terms of whether that occurred here, are  
14 you -- one of the things you said before is that sometimes the  
15 government would prefer to interview somebody first, right?

16 A. Correct.

17 Q. And one of the reasons for that is because the government  
18 wants to get the first crack at them before their story is told  
19 to somebody else because that can influence what they say,  
20 right?

21 A. In certain circumstances, yes.

22 Q. And my question is, when you have all those interviews  
23 that are done in advance, isn't it really the case that what  
24 Cognizant has done is kind of created the narrative for what  
25 the government is looking at by the time they come in six

1 months later?

2 A. No, not necessarily.

3 Q. Okay. When you say not necessarily, under what  
4 circumstances would that not be the case?

5 A. Well, because the team -- the AUSA and I and the FBI were  
6 conducting our own assessment of the information that Cognizant  
7 is providing us, the information that we are getting from other  
8 sources, and law enforcement steps we're taking. We're doing  
9 document review. I remember hiring a -- we hired a third-party  
10 vendor to actually help us because it was so voluminous. So we  
11 were actually trying to get our arms around and understand what  
12 it was we were looking at.

13 And we knew we'd gotten a version of events from the  
14 company, but that was the company's version. We're not on the  
15 same team, and I understand they have an agenda. They want  
16 cooperation credit, and they want a certain result at the end  
17 of the day. But we're doing our own -- we're taking our own  
18 steps to understand the case and focus our investigation on  
19 where we're trying to go.

20 Q. Right. I totally understand. And my question for you is,  
21 though, if you're trying to assess the credibility of their  
22 version of what occurred, which is what you just said, that you  
23 assess whether their version of what occurred is the one that  
24 the government accepts, right? That's what you said?

25 A. That I accept it?

1 Q. Yes. So the question is Cognizant presents you with a  
2 narrative of what they believe occurred, right?

3 A. Yes. They gave us the facts as they understand them.

4 Q. Right. And you want to take a good, hard, neutral look at  
5 that to make sure they're the facts that the government  
6 accepts, right?

7 A. Correct.

8 Q. And that's true in part because Cognizant and the  
9 government don't have the same interests, right?

10 A. Correct.

11 Q. And Cognizant's interests are -- leaving aside getting  
12 cooperation credit, they may have a particular version of  
13 events that they wish to, you know, advance, right?

14 A. Sure, yes.

15 Q. So your job is to take a good hard look at that and make  
16 sure that's what you think is the correct version of events,  
17 right?

18 A. Right. My job is to determine what I think the actual  
19 version of events were.

20 Q. Right. And my question is isn't it the case, though, that  
21 that's harder for you to do if you're doing it after they've  
22 interviewed all the witnesses and produced all the documents  
23 because it kind of lays out the foundation or road map for what  
24 it is that you're seeing?

25 A. Well, I think there certainly are challenges and there's

1 advantages to that as well. I mean, part of, you know, what  
2 the department struggles with -- the Department of Justice and  
3 any investigator is going to struggle with is, you know, we  
4 can't just tell the company to stand down and stop. We're  
5 trying to also learn the case.

6 Like I said, there's tons of documents in this case.  
7 We're trying to get our arms around what actually happened.  
8 I'm not going to interview someone until I have a real solid  
9 understanding of documents and what -- that will form the basis  
10 for what I can actually interview that person on.

11 Q. Right.

12 A. So, you know, there may be times where it's appropriate to  
13 ask a company to hold off if I'm ready to go or we're ready to  
14 go, but in other instances -- you said that they'd been  
15 investigating for months. I don't know that they were  
16 investigating this specific conduct for months ahead of time.  
17 I don't know where they were, but they seemed to be continuing  
18 on their investigation and taking their own investigative  
19 steps.

20 Q. Okay. Let me unpack that a little bit. Let me just talk  
21 about that last part first.

22 You knew that from September, early September 2016,  
23 when you were brought into this case, until you started doing  
24 your investigation, interviewing people, subpoenaing documents,  
25 that sort of thing, beginning in February of 2017 --

1 A. Well, I apologize.

2 Q. No. Go ahead. I want the facts correct.

3 A. Our first interview may have been in February, but that  
4 wasn't -- we had not started an investigation.

5 Q. Fair enough. So let me ask my question differently.

6 So between the time that you got involved in the case  
7 in early September of 2016 until the time you began doing  
8 interviews and subpoenaing documents, which begins in February  
9 of 2017 --

10 A. Uh-huh.

11 Q. Do I have those facts right?

12 A. The interviews, yes.

13 Q. Subpoenas are later, right?

14 A. Yeah, I don't recall when subpoenas were.

15 Q. So in that time period they were investigating exactly the  
16 same things as you were investigating, right?

17 A. Well, I'm sure there was overlap. I took their  
18 investigation to be also broader in other areas.

19 Q. So you think that during that time period they were  
20 investigating other things as well?

21 A. That's what I -- what I think I recall.

22 Q. Okay. In any event, you said that there are times when  
23 the government asks companies to stand down on their  
24 investigation so that they can do -- so that it, the  
25 government, can do its investigation, right?

1 A. Well, I wouldn't say -- there's not a time where you ask a  
2 company to stand down. You might ask -- or the team might ask  
3 the company to not take certain steps until we can take them.  
4 But the direction for department prosecutors is very clear that  
5 you're not to do that lightly and that it's supposed to be for  
6 a limited period of time.

7 Q. So I thought I heard you say before that the government  
8 cannot ask a company to just stop its investigation so that you  
9 can investigate. Am I right about that, or is that not true?

10 A. I think that would be pretty unusual to stop -- to ask a  
11 company to just stop doing an internal investigation.

12 Q. So I just have a few more areas that I just want to go  
13 into, but we're almost done as I said.

14 So my information is that you received a number of  
15 voluntary productions of documents that Cognizant turned over  
16 before there were any subpoenas, right?

17 A. I believe that's correct.

18 Q. And, in fact, there were no subpoenas at all during the  
19 time period that you were there. Am I right about that?

20 A. I don't know. That seems like a fact that could be  
21 verified, but I don't recall.

22 Q. It absolutely can be verified.

23 A. Subpoenas to the company.

24 Q. To the company, yeah.

25 So if I represent to you that there were no subpoenas

1 to the company until November 8th, 2018, which is after you  
2 were gone, do you accept that that's -- may very well be true?  
3 We can get it.

4 A. Could be.

5 Q. And you know that when -- one of the advantages of issuing  
6 a subpoena is that a recipient of a subpoena knows what they  
7 have to produce, that is, what's responsive to the subpoena,  
8 right?

9 A. Correct.

10 Q. In the absence of a subpoena, they're instead making  
11 determinations as to what they think is relevant, because  
12 there's no responsiveness; is that fair?

13 A. No. They could be responding to oral requests that I  
14 made.

15 Q. Okay. So either responding to oral requests or -- are you  
16 aware that in this case Cognizant made certain determinations  
17 as to what was relevant?

18 A. No, although "relevant" I know has a very specific term.  
19 I don't know that they thought they were making relevance  
20 determinations for the purposes of, you know, a criminal trial  
21 or that sort of thing.

22 Q. Let me see if I have anything that would be helpful here.  
23 We'll wait.

24 I did want to ask about privilege. During the time  
25 that you were there, do you recall receiving a privilege log?

1 A. I don't recall specifically, but I believe we did.

2 Q. So let me just show you -- just look in your notebook  
3 because this is not the kind of thing that you can easily --

4 A. Okay.

5 Q. Take a look at Exhibit 42.

6 A. Okay.

7 Q. Do you recognize that privilege log?

8 A. I recognize it as a privilege log and -- based on the date  
9 that it was produced, but I don't -- I haven't reviewed this  
10 recently; so I don't recall it specifically.

11 Q. And I'm sorry. I didn't hear you.

12 A. I'm sorry. I recognize it as a privilege log and I see  
13 the date on there, but I don't recall specifically this.

14 Q. So when you say you don't recall specifically, do you know  
15 if you reviewed this privilege log to determine whether the  
16 assertions of privilege were appropriate?

17 A. I don't recall specifically reviewing this privilege log.  
18 If I had had it, I assume that I would have.

19 Q. Well, the purpose of a privilege log, right, is for the  
20 recipient of the log, the government in this case, to determine  
21 whether the assertions of privilege are appropriate, right?

22 A. Right.

23 Q. And this one says it was received -- I think this is  
24 January 11th, 2018, which was a few months before you departed  
25 the scene, right?

1 A. Six months.

2 Q. Six months. Thanks.

3 But you have no recollection of whether you  
4 reviewed -- whether you received or reviewed this privilege  
5 log?

6 A. I don't know whether I did. Either I did or Oz or Andrew  
7 Bruck or whoever the AUSA. Someone must have looked at this.

8 Q. I want to just ask you about a couple of the entries on  
9 it, just literally a couple, to ask you whether that refreshes  
10 your recollection about receiving it.

11 Take a look at page 111.

12 A. Sorry. Okay.

13 Q. What I want to ask you about in particular is that there's  
14 a document in the middle of the page dated April 29th, 2016,  
15 and it says, "Text message which I received in my personal" --  
16 I think it meant to say "on" -- "on my personal mobile."

17 It's between Mani. And you know who that is, right?

18 A. Yes.

19 Q. And Gordon Coburn.

20 A. Okay.

21 Q. With a copy to Sridhar. Do you see that?

22 A. Yes.

23 Q. You're aware, aren't you, that none of those people are  
24 lawyers?

25 A. Yeah.

1 Q. So my question is going to be, how could there be an  
2 assertion of attorney-client privilege there?

3 A. I don't recall this. I can imagine ways in which it could  
4 be -- there could be an assertion of privilege.

5 Q. What are those ways?

6 A. If they're repeating --

7 THE COURT: Let's not get into imagining the possible  
8 basis --

9 MR. LUSTBERG: Okay. That's fine.

10 THE COURT: -- for assertion of privilege of a  
11 document he can't remember ever seeing before.

12 MR. LUSTBERG: Okay. Got it.

13 BY MR. LUSTBERG:

14 Q. Okay. The final area I just want to go into is, as we  
15 mentioned earlier, you were present for the presentation that  
16 Cognizant made with regard to the so-called Filips Factors?

17 A. The Filip Factors, correct.

18 Q. Filip, one, no plural. Okay. The Filip Factors. That  
19 was May 10, 2018, shortly before you departed. Do you remember  
20 that?

21 A. Yes.

22 Q. And those presentations were aimed at showing why  
23 Cognizant should be granted leniency. In this case they were  
24 specifically requesting a declination, correct?

25 A. Yeah. I think when companies come in and are trying to

1 cooperate, at some point they do a presentation based on  
2 factors that were set forth in the former Deputy Attorney  
3 General Mark Filip's factors that he laid out, and it's since  
4 been incorporated into the U.S. Attorneys' Manual as factors  
5 that the prosecution is supposed to consider when deciding  
6 whether to charge a business organization or reach some other  
7 resolution with them.

8 Q. Right. And you're aware -- one of the things that they  
9 consider -- that you consider, you the government, at that  
10 point is not only what's in the U.S. Attorney Manual and the  
11 Filip memo but also, much discussed here, the Yates Memo,  
12 right?

13 A. Yeah. Although I think -- well, I don't recall at that  
14 time if the Yates Memo had all been incorporated into the U.S.  
15 Attorneys' Manual, but yes.

16 Q. And the Yates manual [sic], doesn't it focus largely on  
17 issues of individual accountability and requires that  
18 corporations provide information if they want to receive full  
19 credit about any facts relevant to persons whom they identify  
20 as involved in misconduct; is that fair?

21 A. Yeah. Well, I think that's correct. I'd have to look at  
22 the exact language, but I think it's -- any relevant facts, but  
23 yes.

24 Q. The point is both the Yates Memo and you mentioned earlier  
25 the FCPA Pilot Program, which is now the FCPA corporate

1 enforcement policy, are really all about individual  
2 accountability, correct?

3 A. Well, they're certainly focused on incentivizing  
4 corporations to cooperate with the government because the  
5 government's focus is supposed to be for a variety reasons on  
6 holding individuals accountable, correct.

7 Q. And that was a big focus, wasn't it, of Cognizant's  
8 presentation to you with regard to the Filip's Factors, right?  
9 When I say that was a big -- let me word it more clearly.

10 A big focus of that presentation was that they had  
11 brought about individual accountability with regard to  
12 Mr. Coburn and Mr. Schwartz; is that fair?

13 A. Well, that was part of it. I mean, there's a number of  
14 factors, and some of the factors are mitigation factors and  
15 others are aggravating factors. So they addressed the  
16 aggravating factors as well as mitigating, and part of their  
17 mitigating argument for mitigation was their cooperation.

18 Q. And, in fact, that was a big part of it. And not only  
19 their cooperation, their cooperation against Mr. Schwartz and  
20 Mr. Coburn, right?

21 A. Well, I wouldn't call it cooperation against Mr. Schwartz  
22 and Mr. Coburn, but they certainly provided information about  
23 the culpability of Mr. Schwartz and Mr. Coburn.

24 Q. Well, you're saying not against, but I want to show you a  
25 couple of things. So let me show you Exhibit 29. This is not

1 a document -- well, why don't you look at it and see if you've  
2 seen this before. This is the outline.

3 A. I have not seen this before.

4 Q. You have not seen that before. So I'm going to ask you  
5 whether this happened. Take a look at page 13.

6 A. Okay.

7 Q. And under remediation, which you just mentioned, it says  
8 that "The company insisted" -- underlined -- "on cooperation,  
9 (including interviews) from both Schwartz and Coburn. Both  
10 resigned after DLA confronted Schwartz with his notes,"  
11 et cetera.

12 Do you recall that that was a part of Cognizant's  
13 Filip Factor presentation?

14 A. I have a vague recollection that that was -- they  
15 certainly talked about Schwartz and Coburn; so I don't dispute  
16 that they may have said this.

17 Q. Let me do one that I think you wrote yourself. So take a  
18 look at Exhibit 49.

19 A. Okay.

20 Q. Sorry. Here we go. Under Cooperation, point 4.

21 A. Yup.

22 Q. It says -- these are your notes, right?

23 A. These look like my notes, yes, sir.

24 Q. It says "Proactive cooperation: Karl and his team  
25 doggedly persisted interviews with GC and SS."

1                   Do you see that?

2   A.   Yes.

3   Q.   And when you say that it was not cooperation against them,  
4   I mean, this presentation was focused on what they had done  
5   with regard to GC and SS, right?

6   A.   Yes, that was certainly part of it.

7   Q.   Sorry. I'm flipping around a little bit here.

8                   Just to go back to an exhibit we looked at before,  
9   take a look at Exhibit 17, page 6.

10   A.   Okay. These are the paralegal notes?

11   Q.   Yup.

12   A.   Right?

13   Q.   Yup. You see where it says in the middle of the page KR?

14   A.   Yup.

15   Q.   This one -- page 6, do you see that? "This one is in the  
16   category of proactive cooperation. Karl and his team persisted  
17   in securing additional interviews with the president and the  
18   GC. That too doesn't always happen and it's a distinguishing  
19   factor."

20                   You know that KR is Kathy Reummller. And so, again,  
21   my question is only -- you know, when you look at this -- I  
22   understand that they addressed other things. A big focus of  
23   that presentation, wasn't it, in terms of getting the  
24   declination that they ultimately got was to say that they had  
25   cooperated against these two individuals?

1 A. Well, I'm not denying that it was the focus. And it made  
2 sense. I mean, if you're -- again, there's mitigating and  
3 aggravating factors. And the biggest aggravating factor for  
4 the company was the fact that the former general counsel and  
5 the former president were engaged in this conduct. So it made  
6 sense that they were, as a mitigating factor, trying to show  
7 the cooperation that they had provided with regard to those two  
8 individuals.

9 Q. I take it you weren't around at the time that the ultimate  
10 decision was made as to whether to grant them the declination  
11 or not?

12 A. No, I left shortly after this.

13 Q. So you can't really say what role it played, but you can  
14 say that it was a big focus of their presentation, right?

15 A. It was certainly an important aspect of their  
16 presentation, yes.

17 Q. Right. And along those lines, take a look at that same  
18 exhibit, actually, pretty much the same page but on to page 7.  
19 Sorry. I've got the wrong one.

20                   Actually, the top of page 7. "We are also confident  
21 we have done everything we can to provide key evidence  
22 regarding the former officials who are the key wrongdoers.  
23 That was complicated by the fact that one was a GC; so that  
24 required an enormous amount of effort. Hundreds of pages of  
25 documents were produced as a result of the Schwartz review.

5 A. I think that's right.

6 Q. Yup.

7 "SEC, looked at whole line. That falls squarely into  
8 proactive cooperation. We also collected his Apple notes and  
9 engaged in an effort to help you all authenticate those and the  
10 handwritten analysis. Forensic deletion on his laptop."

11                   We talked a little bit before about forensic  
12 deletion. So is this telling you that they did all of that  
13 with regard to cooperating against Mr. Schwartz?

14 A. Yes. This seems to reflect that they are suggesting that  
15 all of this should be mitigating for them as part of their  
16 cooperation.

17 Q. Cognizant argued that day that it had done everything it  
18 possibly -- I'm sorry -- responsibly could do to provide key  
19 evidence involving its former general counsel.

20 Do you remember them saying that?

21 A. That sounds correct.

22 Q. Do you agree that they had done everything that they could  
23 do to provide evidence against their former general counsel?

24 A. I don't know, sitting here today, if I could say that they  
25 had done everything. I don't -- I'd have to think about all

1 the steps they took. I haven't sort of thought through this in  
2 quite a while.

3 Q. Okay. Just one last question, which is this: From the  
4 time that Cognizant came to DOJ and self-reported this, their  
5 focus was on Mr. Schwartz and Mr. Coburn. Would that be fair  
6 to say?

7 A. I don't think that would be fair to say.

8 Q. Okay. Tell me why that's not fair to say.

9 A. Because it seemed like they were conducting an  
10 investigation and trying to figure out who else had knowledge  
11 and who else was involved.

12 Q. Uh-huh. And do you know what they did in order to exclude  
13 other people?

14 A. Well, sitting here today, I don't recall specifically, but  
15 they interviewed a lot of people and reviewed a lot of  
16 documents.

17 Q. Uh-huh. And is it your testimony that you didn't get the  
18 sense during that time period that -- well, let me back up.

19 Based on your conversation with them, you understood  
20 that they understood that, in order for them to satisfy the  
21 individual accountability provisions of the Yates Memo and of  
22 the FCPA Pilot Program at the time, that it was incumbent upon  
23 them to provide, I think you said, all relevant information  
24 with regard to individuals, right?

25 A. I think that's a fair summary of what the Yates Memo --

1 Q. Right?

2 A. -- required --

3 Q. I'm sorry --

4 A. -- or any relevant --

5 Q. My bad.

6 And it was -- and you understood from early on,  
7 because they were telling you early on, that that's what they  
8 were doing, right?

9 A. I don't recall ever having a specific conversation about  
10 the pilot program or the Yates Memo or anything like that.

11 Q. You don't -- not even -- not from early on in the process?

12 A. No. I don't have a recollection of that. I certainly  
13 understood that those policies were probably driving what they  
14 were doing, but I never had a specific conversation about how  
15 what they were doing would fit into any one of the policies.

16 Q. Right. And when you say you had an understanding that  
17 that was what was driving what they were doing, where did you  
18 get that understanding from?

19 A. I think the fact that they self-reported and were trying  
20 to cooperate with the government was indicative of -- as many  
21 companies do, that they're trying to get cooperation credit.  
22 And the process for getting that is laid out in various  
23 policies and in the U.S. Attorneys' Manual and in the  
24 sentencing guidelines.

25 MR. LUSTBERG: Thank you. I have nothing further at

1 this time, Your Honor.

2 THE COURT: All right.

3 Counsel for Mr. Coburn, do you wish to supplement  
4 here?

5 MR. LEWIN: I do, Judge, just briefly. Does it make  
6 sense to do it now?

7 THE COURT: Yes. Let's do it now. Let's get this  
8 done and break.

9 Nick, you may want this.

10 (DIRECT EXAMINATION)

11 BY MR. LEWIN:

12 Q. Good afternoon, Mr. Gingras.

13 A. Good afternoon, Mr. Lewin.

14 Q. When did DLA start interviewing witnesses as far as you  
15 remember?

16 A. I don't know exactly when they started interviewing  
17 witnesses. I knew they had been conducting an investigation  
18 over the summer; so I assumed they had interviewed witnesses  
19 then.

20 Q. Do you recall when you first became aware that DLA was  
21 conducting interviews of witnesses?

22 A. It had to have been in the first meetings, sometime in  
23 September or at least in October when we had that first  
24 meeting.

25 Q. The first call you had with them, is it fair to say that

1 was September 14th?

2 A. I think that's correct.

3 MR. LEWIN: Could we pull up Exhibit 4 just briefly.

4 BY MR. LEWIN:

5 Q. I believe you'll see these are your notes as later  
6 transmitted to someone else.

7 Do you have them in front of you?

8 A. I've got them.

9 Q. Does this refresh your recollection that in your first  
10 telephone call they informed you that they had been conducting  
11 interviews of potential witnesses?

12 A. Yes.

13 Q. And this first call, again, September 14th, 2016?

14 A. Yes. I mean, these are notes that I sent to Oz, who's the  
15 AUSA with whom I was partnering on this.

16 Q. You sent them approximately two weeks later, but they  
17 reflect a meeting on the 14th, correct?

18 A. Correct.

19 Q. Do you know why it took two weeks before you sent them to  
20 Oz?

21 A. I think, based on some of the other emails I've seen, I  
22 was overseas. And I think we were waiting in anticipation or  
23 we were trying to schedule this first sort of kickoff or  
24 introductory meeting. So I don't have a good reason why I  
25 hadn't sent it to him before that.

1 Q. That's fine.

2 I believe you testified in response to Mr. Lustberg's  
3 questions that your best recollection, as you sit here now, is  
4 that the first interviews that the Department of Justice  
5 conducted were in approximately February of 2017.

6 A. I think that's right. I think the first one we did was of  
7 Mani in February of 2017.

8 Q. So fair to say that that's about five or six months later?  
9 In other words, five or six months between when you initially  
10 learned that Cognizant was conducting interviews and when you  
11 conducted your first interview?

12 A. Yes.

13 Q. Now, during that period, you guys -- when I say "you  
14 guys," I mean DOJ.

15 DOJ is not conducting interviews; Cognizant is,  
16 right?

17 A. Yes. And DOJ includes the U.S. Attorney's Office and the  
18 FBI. Yes, we were -- we had not conducted any interviews  
19 between that period of time.

20 Q. Was any government agency conducting interviews?

21 A. Not that I'm aware of.

22 Q. The SEC was involved. Were they conducting interviews?

23 A. I don't believe so.

24 Q. But you were getting summaries of witness interviews that  
25 I think were referred to -- I'm not saying it's your term --

1 but as downloads, right, during this time period?

2 A. Yes. I believe we were getting information about the  
3 interviews during that time.

4 Q. So if you could just generalize. If Cognizant is doing  
5 interviews and you guys are not, in general terms, to the  
6 extent you remember, what was DOJ doing between -- in the  
7 context of this investigation between approximately  
8 September 2016 and approximately February 2017 when you conduct  
9 the first interview of Mani?

10 A. I don't remember specifically what we were doing. I know  
11 that we were trying to get documents from L&T and from other  
12 sources. I can't remember when those started rolling in. We  
13 were reviewing documents that the company -- Cognizant was  
14 giving us. We would have been trying to -- I remember it being  
15 very difficult to schedule a meeting with Mani because he was  
16 overseas.

17 The visa issue was always very difficult to get him  
18 into the United States, and that had caused a delay. So we  
19 eventually actually did it overseas. So I think we were  
20 generally trying to get our arms around the documents and the  
21 conduct and try and formulate a plan to conduct our -- as we  
22 conducted our own investigation.

23 Q. Did you --

24 A. We may have served process. I don't recall specifically  
25 what other steps we would have taken, but there certainly were

1       onces we could have taken.

2       Q.    Certainly, there were ones you could have taken.  But in  
3       this case, you mentioned served process.  Certainly not on --

4       A.    Not on Cognizant.

5       Q.    -- Cognizant.  I think we can agree that happened later,  
6       right?

7       A.    Right.

8       Q.    You testified -- in response to Mr. Lustberg's question,  
9       you said, I believe, "At some point" -- this is you speaking.  
10      "At some point, we started conducting our own investigation in  
11      earnest."

12            My question for you is going to be when do you think  
13      that was?  And I will just frame for you that the interview of  
14      Mani that you described overseas -- I believe in Rome -- was on  
15      or about February 7th, 2017.

16            When would you say you started, quote, conducting  
17      your own investigation in earnest?

18       A.    I don't remember specifically, but it would have been  
19      after a few weeks, after we started getting actual documents  
20      from the company and started planning whatever steps we were  
21      going to take.  I just don't recall specifically.

22       Q.    That's fair.  I understand this is in 2017.  We're some  
23      years later.

24            Do you know during this time period whether DLA was  
25      sharing every interview with you or just a subset of the

1 interviews they were doing?

2 A. I -- whether they were sharing every interview? I don't  
3 know if I can remember how many interviews they'd done at that  
4 point and if they shared them all with us.

5 Eventually, I heard the number 500, I mean; so  
6 certainly they didn't -- we didn't ask for or get information  
7 on all 500 interviews.

8 Q. Yes. I think what you're referring to is in the Filip  
9 Factors presentation, Cognizant claimed to have done 450  
10 interviews and downloaded 45 of them to the department.

11 And as you sit here now, do you know whether DLA was  
12 sharing the entire interview with you -- with the Department of  
13 Justice or just the parts they chose to share?

14 A. Well, I've never -- until -- well, I don't think I've ever  
15 seen the interview memos. So I think they were giving us sort  
16 of general outlines. We would follow up and ask for more  
17 information as the occasion called for it. So I don't think  
18 they were reading line by line everything that happened in the  
19 interview.

20 Q. Do you recall discussions with Cognizant about the fact  
21 they were still asserting privilege over certain aspects of  
22 certain interviews and therefore not sharing them at that  
23 point?

24 A. I don't remember that.

25 Q. That's totally fair.

1                   Was it helpful -- when you started conducting  
2 interviews, was it helpful to have the downloads?

3   A.   I don't recall specifically, but I can't imagine that it  
4 wouldn't be helpful to know what a witness has said previously,  
5 especially on the same topics, before I question that witness.

6   Q.   Say more about that. Why would that -- I think you said  
7 you can't imagine why it wouldn't be helpful, but I'll just  
8 flip it around a little.

9                   Why would it be helpful to see what a witness has  
10 said previously on the same topics before you yourself as a  
11 representative of the Justice Department had to interview that  
12 witness?

13   A.   Well, if I know how they've answered the question  
14 previously, I can make my own credibility assessments. I can  
15 make my own assessment of what their recollection is, of  
16 whether their story has changed previously or if it's  
17 consistent. I mean, there's a number of things that I can sort  
18 of judge for myself in the same way that I would if I were  
19 interviewing any other witness who had previously made  
20 statements to someone else on the topic.

21   Q.   Right. Is it fair to say it was likely you were  
22 referring -- sorry. Let me start that again.

23                   Is it fair to say that it was likely you were  
24 reviewing the download summaries prior to crafting your own  
25 outlines or however you prepared for interviews?

1 A. That we were doing that? Like I said, we hired a  
2 third-party vendor to help us actually sift through all of  
3 these documents to do our own document search to prepare for  
4 these interviews, to make sure that we had what we needed  
5 before speaking to a witness and that we would usually circle  
6 up as a team. The AUSA and I would have a discussion. Whoever  
7 had the lead for that interview would draft an outline.

8 So, you know, I don't recall referring back to  
9 interview downloads in order to frame questions. It seems to  
10 reason that I would have referred -- at least looked at them to  
11 understand what they said before. So I guess I apologize. I'm  
12 thinking out loud here, but I'm trying to remember back then.

13 I probably did refer back to them.

14 Q. As you sit here now, do you recall referencing statements  
15 made in a Cognizant interview to a witness whom you were  
16 directly interviewing?

17 A. I don't recall doing that.

18 Q. Is it possible you did it?

19 A. It's possible. I don't recall. I don't know that --  
20 unless there was a good reason to do that, that I would be  
21 inclined to do that.

22 Q. You were a prosecutor for a long time. Isn't there often  
23 a good reason to remind a witness of what they've said before?

24 A. Sure. If they're contradicting themselves or trying to  
25 change their story or -- I mean, those would seem to be the

1 main ones.

2 Q. Or if they're repeating something and you're saying --  
3 well, before you said this, does that refresh your memory? It  
4 doesn't have to be nefarious, right?

5 A. Yes, although I think I would typically try to refresh  
6 someone's recollection with documents first.

7 Q. During Mr. Lustberg's questioning you said -- I'm going  
8 to -- this is more or less a quote.

9 We might at times ask a company to hold off on doing  
10 an interview if we wanted to do the interview first. We might  
11 ask the company to hold off on taking certain steps if we were  
12 trying to take our own steps, but usually that was for a very  
13 limited time and was not done without some trepidation because,  
14 again, we were trying to be thoughtful of Cognizant of trying  
15 not to interfere in whatever the company was doing in its own  
16 investigation.

17 Does that generally sound familiar, even if I didn't  
18 get it --

19 A. That sounds about right.

20 Q. So I want to make sure I understand the Department of  
21 Justice's policy in your mind at the time regarding the order  
22 of interviews, the order of -- let's call it deconfliction. Is  
23 that a fair term to use here?

24 A. Makes sense.

25 Q. So what is your understanding of the -- let me limit it

1 further -- the FCPA unit's policy on deconfliction of  
2 interviews?

3 A. Well, I don't think the FCPA unit had a specific  
4 deconfliction policy separate from the Department of Justice.  
5 I mean, I think a lot of what informed my answer there was  
6 department policy through the Yates Memo, which -- I think it  
7 was the Yates Memo. It could have been in the U.S. Attorneys'  
8 Manual. I can't remember now -- where they discuss  
9 deconfliction.

10 Q. But I want to be precise. Is it your testimony today that  
11 it's Department of Justice policy that the Department of  
12 Justice stands back and waits so as not to interfere with  
13 private actors conducting their own interview -- so what --  
14 policy, practice, what is the practice with regard to what  
15 order -- in what order interviews occur as between the Justice  
16 Department on one hand and a private entity on the other?

17 A. I don't think there's any standard practice. I think  
18 every case is different. And depending on how the case comes  
19 in from the company, the company could be done with an internal  
20 investigation. They could have completed it and are presenting  
21 us with their findings. Or they could be just at the  
22 beginning, or they could be in the middle or any number of  
23 places.

24 So in any of those circumstances, it's going to  
25 present different challenges, I think, for the department's

1 investigation. If it's an ongoing internal investigation by  
2 the company at the same time, then I think certainly I -- and I  
3 think the department's policy -- are not wanting to tell --  
4 dictate to companies how they can and can't do their own  
5 investigations.

6 And so I can't -- and I can't remember the specific  
7 policy, but I think there's even an example of, for example,  
8 asking a company to hold off on doing an interview because the  
9 department has reasons to want to do it first but that there  
10 should be a time limit to that and not just basically shutting  
11 down a company's internal investigation.

12 Q. But some might say that this is exactly the reverse. When  
13 the Department of Justice has a criminal investigation, serious  
14 stakes could result in the loss of liberty to a human being,  
15 the Department of Justice wants to go first. The Department of  
16 Justice wants to collect its evidence first. The Department of  
17 Justice wants or should want to interview witnesses first  
18 before any private party --

19 THE COURT: Is there a question here?

20 BY MR. LEWIN:

21 Q. -- conducts the interview.

22 Is that not your understanding of Department of  
23 Justice procedure?

24 MR. LEWIN: I got there, Judge.

25 A. No, I don't take the Department of Justice policy to be

1 that we always have to go first.

2 BY MR. LEWIN:

3 Q. Have you been involved in investigations that also involve  
4 what I'll call a parallel investigation by the SEC?

5 A. Yes.

6 Q. And in those investigations does the Department of Justice  
7 step aside so as not to interfere with the SEC's investigation?

8 A. No.

9 Q. Have you been involved in investigations involving the  
10 CFTC?

11 A. I don't think I've worked with the CFTC.

12 Q. Let's just go broader. In a typical investigation of  
13 possible criminal activity, the government tries to interview  
14 witnesses as close in time to alleged criminal activity as  
15 possible; is that fair to say?

16 A. Yeah, but there are a lot of circumstances that one has to  
17 take into account, that prosecutors have to take into account.  
18 Especially in cases like this that are document-intensive, it  
19 would be, frankly, malpractice if you just ran in and did an  
20 interview when you didn't have a full grasp of the universe of  
21 conduct that you're trying to learn about. So --

22 Q. So -- I apologize.

23 A. So if there are -- you know, it's a voluminous set of  
24 documents. Again, there's no ongoing crime. There's no one  
25 fleeing, there's no spoliation of evidence, there's nothing

1 sort of immediate, then our practice on this case with the U.S.  
2 Attorney's Office and DOJ and in other cases that I've worked  
3 on is to work diligently to try and do that quickly but to also  
4 make sure that you're prepared going into it.

5 In addition, when you're talking about foreign  
6 witnesses, as a lot of these witnesses were, there's so many  
7 complications that are involved. So I couldn't just get on a  
8 plane -- and we couldn't just get on a plane and fly to India  
9 the next day. That's not how it works.

10 Q. So you're saying essentially it would be, I think you  
11 said, basically malpractice to rush in -- for DOJ to have  
12 rushed in and tried to do these interviews at that early point  
13 in time before reviewing the documents?

14 A. Well, I was speaking hyperbolically, but --

15 Q. I'm not trying to draw a legal conclusion. It would have  
16 been bad practice for DOJ to do that?

17 A. I think we wanted to make sure that we were prepared  
18 before we talked to a witness, and that included reviewing  
19 documents and understanding the case and not just taking what  
20 the company was telling us was the case.

21 Q. So why isn't it bad practice for the company to be doing  
22 exactly what you just described?

23 A. Why is it --

24 Q. Why is it not bad practice for the company to be going in  
25 and conducting these exact interviews?

1 A. I'm not going to opine on what the company decided to do  
2 and what -- its own practice and how it conducted its  
3 investigation, but they're separate from what I was doing.

4 Q. But you're relying upon the company's downloads, at least  
5 in the first instance, as part of your information gathering?

6 A. Well, if the company is going to decide to interview  
7 witnesses and those are witnesses that we are going to want to  
8 interview, then I would certainly want to know, as I think any  
9 prosecutor in America would want to know, what that person said  
10 in that interview before I talked to them.

11 Q. And the way you would find out what they said is by  
12 relying on the company?

13 A. Yes.

14 Q. You describe the company as -- in certain -- in answer to  
15 Mr. Lustberg's question as, in certain ways, just like a  
16 cooperating witness, they're coming in to give information in  
17 the hopes to get leniency in exchange, right?

18 How is a company like a cooperating witness?

19 A. Well, I think exactly what you just said and what I had  
20 previously said. They're trying to curry favor with the  
21 government by providing information to the government that the  
22 government would deem useful and helpful.

23 Q. Does that mean generally you would treat a company coming  
24 in with some degree of scepticism because you recognize that  
25 they are essentially like a cooperating witness?

1 A. Certainly.

2 Q. And in terms of this case, what, if anything, do you  
3 recall doing to challenge or, in your words, pressure-test what  
4 Cognizant was doing as a cooperating witness that couldn't  
5 necessarily be fully trusted not because of anything ethical  
6 but because of divergent interests?

7 A. Well, I think, as in any case, the team would assess the  
8 information that we were acquiring through various sources  
9 either from the company or from third parties or other -- there  
10 was another company -- an Indian company from whom we were  
11 trying to acquire information and make an assessment of whether  
12 the story we were hearing and facts we were getting were, in  
13 fact, consistent with what we would see.

14 And when we conducted interviews, you know, we would  
15 certainly assess whether what we were hearing from those  
16 witnesses were consistent or different or -- you know, than  
17 what they had said in previous interviews.

18 And then just in the responsiveness of the company to  
19 any requests that we would make, the posture that the company  
20 would take with regard to information, it was just a constant  
21 assessment from beginning to end on how the company was  
22 conducting itself.

23 Q. In your opinion based on your experience, is a witness  
24 more likely to answer your questions or company counsel's  
25 questions?

1 A. What witness are we talking about?

2 Q. A given witness. Which is more likely to yield an  
3 interview in which someone participates, the Department of  
4 Justice interview or the company's interview?

5 A. I mean, it depends entirely on the circumstances. Do you  
6 mean in this case specifically or generally?

7 Q. Why don't we start generally. What kind of circumstances  
8 would make it more likely that a potential witness would answer  
9 a government interview as opposed to their employer's questions  
10 during an interview?

11 A. I'm sorry. Are you drawing a distinction between if --  
12 are you saying, if a witness had a choice to cooperate with one  
13 or the other or talk to one or the other, that they would  
14 choose us over them? Is that the question?

15 Q. No. The question is just, based on your experience,  
16 whether you have a sense as to whether people are more likely  
17 to answer questions asked by their employer in the context of  
18 interview or the Justice Department and FBI?

19 THE COURT: Maybe you can answer that on a general  
20 level; maybe you can't. But let's get moving.

21 A. I mean, I think there are certainly lots of hurdles for  
22 the government because people are worried about sitting in  
23 front of an FBI agent. But given -- I've seen this in my own  
24 experience in the last few years, internal to a company. I  
25 think people are just as nervous talking to security or, you

1 know, an ethics investigator or what have you. So I think they  
2 both have challenges, but perhaps it's more difficult to get  
3 someone to talk to the government.

4 BY MR. LEWIN:

5 Q. I believe you testified in response to Mr. Lustberg's  
6 questions that you don't recall talking to DLA about the  
7 conditions of the interviews. And by "conditions," I'm  
8 referring specifically to the requirement that there be one  
9 lawyer present, that lawyer not take any notes, not ask any  
10 questions or comment.

11 Am I correct that you don't recall having  
12 conversations with DLA about those conditions?

13 A. I don't recall specifically. They may have told me. I  
14 don't recall specifically.

15 Q. Is it fair to say those are coercive conditions?

16 A. I mean, depends what you mean by "coercive." If you're --  
17 I can tell you some companies would never allow a lawyer in the  
18 room, period. So I think it's relative.

19 Q. I think we are in agreement. The DOJ couldn't impose  
20 conditions like that on an interview?

21 A. Certainly. Certainly not I should say.

22 Q. Do you believe that today during the hearing and reading  
23 the briefs was the first time you heard about those conditions,  
24 or do you believe that it was some time in the past when you  
25 were involved?

1 A. I'm not precluding the possibility that they told me. I  
2 just don't recall having an independent recollection of that,  
3 and I know that I read them about the -- in the briefs that I  
4 skimmed in preparing for this hearing.

5 Q. Do you recall discussing with DLA the representation of  
6 employees, whether employees would be or would not be  
7 represented or recommended to get a lawyer?

8 A. I recall having those discussions at times, yes.

9 Q. Would it have been appropriate for the Justice  
10 Department -- more in play the Justice Department -- to ask  
11 company counsel whether or not they are recommending that a  
12 certain employee obtain counsel?

13 A. Whether or not the company is recommending?

14 Q. Yes.

15 A. I guess I would have to know the context of the  
16 conversation.

17 MR. LEWIN: Could we bring up Exhibit 32. I believe  
18 it's page Bates number ending in 30.

19 BY MR. LEWIN:

20 Q. Do you have that in front of you?

21 A. 32?

22 Q. Exhibit 32.

23 A. Yes, I have 32.

24 Q. Just take a moment to review that, and I'm going to grab  
25 mine as well.

1 A. Sir, where am I looking?

2 Q. If you're looking at the bottom of the page, again,  
3 Defense Exhibit 32, it's page 7 of 10. The Bates number ends  
4 in 30 at the bottom of the page. It's sort of the last full  
5 bullet point. And I'll represent to you that these are  
6 paralegal notes regarding a December 7th, 2016, download from  
7 DLA to DOJ.

8 First, do you know who DA is?

9 A. I don't, because it's not -- I don't know who DA is.

10 Q. Could you just read these five -- the bullet -- the five  
11 lines -- sorry -- six lines at the bottom there.

12 A. Okay.

13 Q. Read them out loud if you would.

14 A. "DA: BG have a lawyer?

15 "DLA: No. We are interviewing Raj Gosh tomorrow,  
16 and he lives in U.S.

17 "DA: BG is still cooperative?

18 "DLA: Yes.

19 "DA: Will you recommend that he obtain counsel?

20 "DLA: We do not do that but will tell him."

21 Q. That's all. You're welcome to go on if you'd like. But  
22 my question is -- well, first, is it fair to say that DA is  
23 likely a member of the government team given the context?

24 A. I mean, given the context, perhaps, although there was no  
25 one on the government team named DA.

1 Q. As you sit here now, can you think of a legitimate reason  
2 why Cognizant would be asking about whether -- sorry -- about  
3 whether the government would be asking whether Cognizant will  
4 recommend that a witness obtain counsel?

5 A. I mean, if, in fact, that's what this was -- I'm sorry.  
6 What was your question? Can I think of a reason why --

7 THE COURT: Are you asking him to assume that DA is  
8 on the government team even though he doesn't know anybody  
9 named DA on the government team?

10 MR. LEWIN: I am, Judge.

11 THE COURT: On that assumption, to answer the  
12 hypothetical question, would that be okay?

13 MR. LEWIN: I am, if only because context doesn't  
14 seem to permit a different interpretation given that DLA is  
15 clearly --

16 THE COURT: I'm just trying to clarify the question.

17 MR. LEWIN: Yes, Judge. But I can withdraw it if  
18 Your Honor --

19 THE COURT: No, go ahead.

20 A. I'm sorry. Your question is, is that --

21 BY MR. LEWIN:

22 Q. Yes. Assuming for a moment that DA is, in fact, on the  
23 government team --

24 A. Right.

25 Q. -- is it appropriate for the government to be making that

1       inquiry about the recommendation of counsel?

2       A.     I don't think it's necessarily inappropriate. Again, I  
3       haven't read the context of this entire exchange. But I think  
4       if he were someone that we wanted to interview and he has  
5       counsel, then we would want to know that so that we could work  
6       through that counsel.

7                    MR. LEWIN: Okay. If we can pull up defense  
8       Exhibit 2 and go to page 1. If we can scroll in on that top  
9       email.

10      BY MR. LEWIN:

11      Q.     Mr. Lustberg showed you this before.

12      A.     Okay.

13      Q.     Here DLA is providing DOJ personal, not company, email  
14       addresses, correct?

15      A.     Yes.

16      Q.     Do you know what steps or do you believe you knew at the  
17       time what steps Cognizant took to gather the personal email  
18       addresses of its employees?

19      A.     I don't, but this -- you know, I'd seen this in other  
20       investigations that we conducted where we would ask the company  
21       to see, within the data set that they had of their  
22       investigation, if there were personal email addresses being  
23       used in communications; and if they were, then we would ask for  
24       those.

25      Q.     And would it matter to DOJ, would it be significant how

1 the company got those personal email addresses? Or is that  
2 sort of beyond what you would be interested in with making the  
3 request for personal email addresses?

4 A. Well, I don't -- I think it would make a difference in the  
5 sense that, if they're not being used within the documents that  
6 are part of the investigation, they would be irrelevant to us.

7 Q. But in general, is it fair to say that the department will  
8 make the ask -- in this case ask Cognizant to provide personal  
9 email addresses -- and Cognizant will try to fulfill that  
10 request and how they do it is sort of up to them?

11 A. Well, no, because if they just go to an address book and  
12 pull email addresses, that's not going to help us.

13 I mean, obviously, we are asking for this because, if  
14 they're used in furtherance of the scheme, we're going to have  
15 to make a probable cause showing in an effort to get an email  
16 search warrant. So if they're just getting email addresses in  
17 some way that isn't actually part of the, let's say, universe  
18 of documents, then I don't know that that would be particularly  
19 helpful for us. So I think it would matter.

20 Q. Okay. In your current position are you involved in  
21 internal investigations?

22 A. Yes.

23 Q. And are you involved in internal investigations where the  
24 government --

25 MS. PATEL: Your Honor, I'm going to object here.

1                   THE COURT: Yes, I'm going to sustain that.

2                   I've given a lot of latitude. This is not a person  
3 called as an expert witness or to give general opinions about  
4 how things are done here and there. Let's try to stick to the  
5 issue and what happened in this case.

6                   MR. LEWIN: Definitely, Judge.

7 BY MR. LEWIN:

8 Q. You testified in response to Mr. Lustberg's questions that  
9 you were very careful about not providing guidance to the  
10 company, correct?

11 A. Direction and guidance, sure.

12 Q. Direction and guidance.

13                   But you would ask questions of the company, right?

14 A. Absolutely.

15 Q. And as you sit here now, sir, what in your mind is the  
16 dividing line between a prosecutor asking whether the company  
17 is going to take a certain step and giving them guidance?

18 A. Well, I mean, if you're just asking me to sort of come up  
19 with examples, I mean, I think there are a lot of -- I think  
20 there's a line between the government telling the company to do  
21 something, telling the company to go interview this person, or  
22 if you're going to interview this person, ask them these  
23 questions. That seems to be pretty far over the line.

24                   MR. LEWIN: If we can pull up Defense Exhibit 11.

25 BY MR. LEWIN:

1 Q. Again, this is an exhibit that Mr. Lustberg showed you.  
2 Take a moment to review it.

3 My only question is whether, prior to this call, you  
4 were aware of Cognizant's plan to terminate Mr. Coburn.

5 A. Prior to which call? I'm sorry.

6 Q. Sorry. The call that's reflected here in these notes to  
7 Mr. Tsao.

8 A. Let me read this one.

9 Q. Yes, of course.

10 A. Okay. I'm sorry. What was your question?

11 Q. My question is just whether, as you sit here now, you  
12 recall being aware of Cognizant's plans with respect to  
13 Mr. Coburn's employment -- continued employment at Cognizant?

14 A. No, I was not aware.

15 Just so I understand the question, I think I'm  
16 reporting that they told me this in the phone call. So is your  
17 question that I understood that before that call?

18 Q. My only question is whether you, as you sit here now,  
19 recall conversations about Mr. Coburn's continued employment at  
20 Cognizant prior to this call at which they informed you he had  
21 resigned.

22 A. No.

23 MR. LEWIN: Judge, may I have just one moment?

24 THE COURT: Sure.

25 MR. LEWIN: Nothing further, Judge. Thank you.

1                   THE COURT: Anything from the government?

2                   MS. PATEL: Yes, Your Honor. Just a brief  
3 cross-examination.

4                   (Discussion off the record between counsel.)  
5                   (CROSS-EXAMINATION)

5 BY MS. PATEL:

6 Q. So, Mr. Gingras, I just have a few questions for you. I  
7 hopefully won't be taking up too much of your time.

8 A. Okay.

9 Q. So, Mr. Gingras, you were assigned to this investigation  
10 in early September 2016; is that right?

11 A. That's correct.

12 Q. At some point during the first few weeks of that  
13 investigation, you learned that the company intended to  
14 interview -- or rather that the company had interviewed  
15 Mr. Coburn and Mr. Schwartz prior to its disclosure to the  
16 government; is that right?

17 A. I think that's correct.

18 Q. Before those two interviews happened, before the  
19 government -- before the disclosure had been made to the  
20 government, did you have any communications with counsel for  
21 the company about how they should conduct those interviews or  
22 whether they should conduct those interviews?

23 A. Before the interviews that they -- conducted before they  
24 disclosed?

25 Q. Yes.

1 A. No, I didn't. I'd never even heard of Cognizant.

2 Q. And at some point you learned that the company intended to  
3 interview Mr. Schwartz in September of 2016; is that right?

4 A. Correct.

5 Q. And did you ask the company to conduct that interview?

6 A. No.

7 Q. Did you tell the company that they should not conduct that  
8 interview?

9 A. No.

10 Q. Did you tell the company how they should conduct that  
11 interview?

12 A. No.

13 Q. Did you give the company questions that they should ask  
14 Mr. Schwartz?

15 A. Definitely not.

16 Q. Did you give the company any instruction about the tone  
17 that it should take during the interview in asking questions?

18 A. No.

19 Q. Did the company tell you how they planned to interview  
20 Mr. Schwartz and ask for your input on their plan for the  
21 interview?

22 A. No.

23 Q. Did they ask for input on their style of questioning?

24 A. No.

25 Q. Did they ask for input on the topics that they intended to

1 cover?

2 A. No.

3 Q. So you received information about the interview that they  
4 conducted, but you did not provide any instruction or direction  
5 on how that interview should be conducted?

6 A. No. And I will say I think they may have told me that  
7 they were going to ask him about the notes I think which they  
8 recently discovered. So I just want to make sure I'm clear  
9 about that. But that seems like a logical thing they would  
10 have told me about, but I would not have opined or given them  
11 direction, both because I knew not to do that and it was so  
12 early in the case, I don't know how I possibly could have felt  
13 empowered to tell them what to say or how to ask things, not  
14 knowing anything about the case.

15 Q. And, Mr. Schwartz -- Mr. Gingras. Sorry about that.

16 MS. PATEL: If we could pull up Defense Exhibit 14,  
17 please. If you could highlight at the bottom of the page where  
18 it says "Remediation."

19 BY MS. PATEL:

20 Q. Mr. Gingras, I'm just going to ask you to read to the  
21 bottom of that page under "Remediation."

22 A. Bottom of the page of --

23 Q. Of the second page. I apologize.

24 THE COURT: There we are.

25 MS. PATEL: Apologies.

1 A. Okay.

2 BY MS. PATEL:

3 Q. I believe Mr. Lustberg asked you about this portion of  
4 these notes, which are your notes from the first meeting with  
5 the company on October 6th, 2016.

6 A. Yes.

7 Q. It says here, "Week after next RW will come in."

8 Do you see that?

9 A. Yes.

10 Q. Could RW be a reference to Reid Weingarten?

11 A. Oh, yes.

12 Q. Who was Mr. Weingarten?

13 A. He was Mr. Schwartz's attorney at the time, I believe.

14 Q. So does that indicate to you that the company was having a  
15 conversation with Mr. Schwartz's counsel?

16 A. Yes.

17 MS. PATEL: We're done with this document.

18 BY MS. PATEL:

19 Q. During Mr. Lustberg's questioning of you, he characterized  
20 Mr. Schwartz's interview as something that was helpful to the  
21 government.

22 Do you recall that?

23 A. Yes.

24 Q. But you didn't tell the company to conduct that interview?

25 A. Definitely not.

1 Q. And if the company had terminated Mr. Schwartz before he  
2 was interviewed, you could have sought to conduct your own  
3 interview of him; is that right?

4 A. Yes.

5 Q. You knew he had counsel?

6 A. Yes.

7 Q. You could have contacted his counsel?

8 A. Yes.

9 Q. And you could have asked his counsel if he was willing to  
10 come in and speak to you?

11 A. Yes.

12 Q. So you had the opportunity. You could have gotten that  
13 information if he chose to speak to you; is that right?

14 A. That's right.

15 Q. Now turning to sort of the initial period of the  
16 investigation. The company discloses at the beginning of  
17 September and the first meeting with the company happens in the  
18 first week of October; is that right?

19 A. Yes.

20 Q. And during that time you, as the government attorney, are  
21 trying to get your arms around the facts to develop an  
22 investigative plan; is that right?

23 A. Along with my colleague, who was an AUSA in this distinct,  
24 yes.

25 Q. And, in fact, in early -- in October of 2016 you and the

1 attorney in the -- in New Jersey and the FBI served a  
2 preservation notice on L&T, the company we've been talking  
3 about a little bit today; is that right?

4 A. That sounds right, yes.

5 Q. In fact, in October of 2016 you and Mr. Benvenuto started  
6 having discussions with L&T about L&T producing documents to  
7 the government; is that right?

8 A. That's correct.

9 Q. You did not tell Cognizant that you were doing that,  
10 right?

11 A. I don't believe so, no.

12 Q. And, in fact, you ultimately ended up interviewing a  
13 number of L&T witnesses; is that right?

14 A. Yes. We had documents from the company. We reviewed  
15 documents, and we also interviewed a number of witnesses from  
16 the company, correct.

17 Q. And that was through a process of negotiation with counsel  
18 for L&T to make their employees available to the government to  
19 interview; is that right?

20 A. Yes.

21 Q. And you didn't tell Cognizant that you were negotiating  
22 with L&T to interview L&T witnesses; is that right?

23 A. I don't recall doing that, no.

24 Q. And you didn't give Cognizant information about the  
25 substance of those interviews that you conducted of L&T

1       witnesses?

2       A.    Definitely not.

3       Q.    And it was important for you to understand L&T's role in  
4       this conduct, right?

5       A.    Yes.

6       Q.    And that's why you were taking these steps very early in  
7       the investigation to engage with L&T and to obtain documents  
8       from them and interview their employees; is that right?

9       A.    Yes.

10            MS. PATEL:   If we could pull up Defense Exhibit 61.

11            BY MS. PATEL:

12       Q.    Now, Mr. Gingras, before we look at this exhibit, during  
13       your questioning by Mr. Lustberg, he asked you about the number  
14       of interviews that Cognizant, the company, had conducted in the  
15       course of its investigation.

16            Do you recall that?

17       A.    Yes.

18       Q.    And he mentioned that Cognizant had conducted about 450  
19       interviews. Does that sound right?

20       A.    Yes.

21       Q.    Cognizant did not give you summaries of all 450 of those  
22       interviews, correct?

23       A.    Not when I was there.

24       Q.    And I think you mentioned that that was because the  
25       company's investigation was not just into the allegations in

1 the indictment, but they were investigating a number of other  
2 things?

3 A. That's correct.

4 MS. PATEL: So if we could turn to page 3 of this  
5 document.

6 BY MS. PATEL:

7 Q. Mr. Gingras, I'm going to direct your attention to the  
8 middle of the page. There's a bullet point that says "Phase I  
9 Interviews."

10 A. Yes.

11 MS. PATEL: If you could highlight that portion.

12 BY MS. PATEL:

13 Q. Mr. Gingras, Phase I, it looks like from this, is related  
14 to the KITS planning permit; is that right?

15 A. That appears to be correct.

16 Q. And here does it say that there were 95 interviews  
17 conducted in India and in the United States in connection with  
18 Phase I?

19 A. Yes.

20 MS. PATEL: If we could turn to page 7 of this  
21 document.

22 BY MS. PATEL:

23 Q. Mr. Gingras, if you look at the top of this page, it talks  
24 about the scope of Phase II of the company's investigation.

25 Do you see the scope at the top of the page?

1 A. I'm sorry. What page are you on? 7?

2 Q. 7. It's Bates number ending in 5263.

3 A. Okay.

4 Q. At the top it says "Scope and Timeframe of the  
5 Investigation"?

6 THE COURT: We're still on 62 on the screen.

7 MS. PATEL: 5263 is the Bates number at the bottom.

8 THE COURT: There we go.

9 MS. KRAMER: Correct. Excuse me, Your Honor. I  
10 apologize for the interruption. We just want to make sure. We  
11 think this might have been filed in a redacted form. So we  
12 want to make sure that we address that before you display it,  
13 if you don't mind pulling it down.

14 THE COURT: Take one second.

15 MS. PATEL: Thank you, Your Honor.

16 THE COURT: There may be no issue at all. Just find  
17 out if you're showing something that was redacted.

18 (Discussion off the record between counsel.)

19 MS. PATEL: I think I can ask my questions without  
20 needing to put up documents that apparently --

21 THE COURT: I think I see what you're getting at. Go  
22 ahead.

23 MS. PATEL: -- were redacted.

24 BY MS. PATEL:

25 Q. So, Mr. Gingras, we just looked at something that said

1 that there were 95 interviews that were conducted in connection  
2 with Phase I; is that right?

3 A. Correct.

4 Q. And Phase I is related to the conduct at issue in the  
5 indictment in this case; is that right?

6 A. That's correct.

7 Q. So the other interviews, the other about 355 interviews,  
8 those were related to topics that the company was investigating  
9 that were not the facts related to the indictment in this case  
10 of Mr. Coburn and Mr. Schwartz; is that right?

11 A. That's correct.

12 MS. PATEL: I don't have any further questions,  
13 Your Honor.

14 THE COURT: Okay. That was very brief cross. I will  
15 entertain a very, very brief redirect.

16 MR. LUSTBERG: No further questions, Your Honor.

17 MR. LEWIN: Nothing, Judge.

18 THE COURT: Okay. Thank you.

19 You may step down, sir.

20 We are now going to take our one-hour break. See you  
21 all back at 2:25.

22 (Lunch recess taken 1:25 p.m. through 2:25 p.m.)

23 THE COURT: Let's resume. Be seated.

24 Government, I think Mr. Last was next. Is that  
25 right? Government, I think Mr. Last was next.

1 MR. FINZI: That's right, Your Honor. Defense calls  
2 Mr. Last.

3 THE WITNESS: Good afternoon, Your Honor.

4 DAVID LAST, DEFENSE WITNESS,

5 having been duly affirmed, testifies as follows:

6 THE WITNESS: I do.

7 THE COURTROOM DEPUTY: Please be seated.

8 Keep the mic close to your mouth, speak loud and  
9 clearly. State your name for the record and spell it, please.

10 THE WITNESS: Yes. My name is David Last, D-A-V-I-D,  
11 L-A-S-T.

12 MR. FINZI: Your Honor, may I proceed?

13 THE COURT: Go ahead.

14 (DIRECT EXAMINATION)

15 BY MR. FINZI:

16 Q. Let me try to start over.

17 Mr. Last, you're currently the chief of the FCPA unit  
18 at the Department of Justice?

19 A. That's correct.

20 Q. And you've had that position since about April of 2021?

21 A. Correct.

22 Q. And before that, you were principal assistant chief at the  
23 FCPA unit?

24 A. Yes, since about July 2019.

25 Q. So how long have you been in leadership at the FCPA unit?

1 A. I've been number one and two in the unit for the last --  
2 close to four years. Before that, I was an assistant chief  
3 since, I think, September 2017. And I was a line attorney  
4 before that, from April 2016 till September 2017.

5 Q. As chief of the FCPA unit, you have responsibility for all  
6 of the DOJ's FCPA cases?

7 A. Correct.

8 Q. And you approve charging decisions?

9 A. FCPA charging decisions and related cases within the unit,  
10 yes.

11 Q. Related to FCPA cases?

12 A. Correct.

13 Q. And you approve settlements and dispositions of FCPA cases  
14 within the unit?

15 A. So pleas with regard to individuals, like guilty pleas  
16 with regard to individuals. And as far as corporate  
17 resolutions, I approve them within the unit; but those get  
18 approved further up the chain at DOJ as well.

19 Q. Fair to say you have a role in setting FCPA policy?

20 A. I have a role in discussing it with people within the  
21 department, yes.

22 Q. Well, but don't you also have a role in discussing it with  
23 people outside the department?

24 A. I speak sometimes externally about our policies, yes. You  
25 said setting policies.

1 Q. So you speak from time to time to the public about FCPA  
2 policy, correct?

3 A. Yes.

4 Q. Your work with the unit is such that you're familiar with  
5 the Yates Memo?

6 A. Yes.

7 MR. FINZI: Could we put a copy of it up on the  
8 screen. I think it's Defendants' 47.

9 A. You said 47?

10 BY MR. FINZI:

11 Q. Four-seven, yes.

12 Do you recognize that as the Yates Memo?

13 A. Yes.

14 Q. And that was written by the deputy AG at the time, Sally  
15 Yates?

16 A. Yes.

17 Q. Who was the second-highest-ranking officer at the  
18 Department of Justice at the time?

19 A. Correct.

20 Q. It was issued on September 9 of 2015?

21 A. Yes.

22 Q. So that's less than a year before Cognizant self-disclosed  
23 in this case, correct?

24 A. Yes.

25 Q. And is it fair to say that the Yates Memo sets out the

1 Department of Justice's policies on cooperation, among other  
2 things?

3 A. It sets out the department's approach with regard to a  
4 variety of issues.

5 Q. Does it set forth the department's policies with respect  
6 to cooperation?

7 A. Among other things, yes.

8 Q. And does it set out at least in part what prosecutors  
9 should and should not do in evaluating cooperation?

10 A. Do you want to point me to a particular provision?

11 Q. Sure. If you look at page -- let's go to page 4.

12 A. Any particular section?

13 Q. Yeah, the section there that reads "both criminal and  
14 civil attorneys should focus on individual wrongdoing."

15 A. Okay.

16 Q. So am I correct that, at least in part, the Yates Memo  
17 sets forth what prosecutors should and should not do?

18 A. It does say that we should focus on individuals from the  
19 inception of the investigation.

20 Q. Now, the policies set forth in the Yates Memo are  
21 addressed to DOJ employees if we go back to the first page,  
22 right?

23 A. Yes.

24 Q. But they're also intended for the legal community and  
25 corporations, correct?

1 A. It's issued to people at the department, but it's  
2 publicized.

3 Q. So it's not secret, right?

4 A. It's public; so no.

5 Q. It's on the DOJ's website?

6 A. It's public, yes.

7 Q. And the department routinely speaks about it?

8 A. There have been public comments. There have been public  
9 statements about it, yes. Routine? I don't know how you would  
10 define routine.

11 Q. Is it fair to say that the Yates Memo outlines the conduct  
12 that the government expects from corporations in order for them  
13 to receive cooperation credit?

14 A. It talks about cooperation with respect to companies and  
15 what prosecutors should look for in their cases.

16 Q. But it also talks to corporations and what they should do,  
17 or at least the policy does, right?

18 A. Again, it's issued to people in the department. It's  
19 public. And so I can't tell you the way companies and other  
20 corporates or individuals read this.

21 Q. Well -- but I think you said before Ms. Yates -- or people  
22 give speeches about the policy, correct?

23 A. Correct.

24 Q. And that those speeches are designed to communicate the  
25 policy to people outside the department, correct?

1 A. It's to be transparent about the policies.

2 Q. And to communicate and be transparent about the policies,  
3 not just with lawyers inside the department but with general  
4 counsels and defense lawyers, correct?

5 A. Among others, yes.

6 Q. People in compliance?

7 A. Among others, yeah.

8 Q. So let me ask you again. Is part of the purpose of the  
9 memo to communicate to companies what is expected of them if  
10 they want cooperation credit?

11 A. I can't tell you what the purpose was. I didn't draft the  
12 memo. I wasn't involved in drafting the memo.

13 Q. So as somebody who's responsible for policy and speaks on  
14 it, you can't say whether or not part of the objective is to  
15 communicate a message to companies?

16 A. I thought you said the purpose in drafting the memo. The  
17 memo is public; so part of what we discuss when we discuss it  
18 externally, when we discuss it publicly, is so that people in  
19 the public, some of the categories that you described, are  
20 aware of our expectations, if that's your question.

21 Q. And in order to do that -- well, let me go back.

22 Part of the -- the memo was intended, at least in  
23 part, to inform corporations on what was expected of them with  
24 respect to individual accountability, correct?

25 A. I mean, the memo is entitled "Individual accountable for

1 corporate wrongdoing."

2 Q. So fair to say that that's a yes?

3 A. I mean, if you're pointing to a specific provision, I'm  
4 happy to take a look at it. If your question is, is the memo  
5 about individual accountability for corporate wrongdoing, the  
6 answer is yes, that's the subject line of the memo.

7 Q. And one of the messages that comes from the memo is that,  
8 in order to qualify for cooperation credit, corporations must  
9 provide to the department all relevant facts relating to  
10 individuals responsible for the misconduct; is that right?

11 A. That's correct.

12 Q. And in order to get credit -- withdrawn.

13 And if corporations decline to learn of facts  
14 relevant to individuals or don't provide complete factual  
15 information about individuals, it could also -- it could not  
16 get any cooperation credit, correct?

17 A. I didn't follow that question. Can you rephrase.

18 Q. Yeah. If corporations decline to learn of facts relevant  
19 to individuals or if they fail to provide complete factual  
20 information about those individuals, it's fair to say that they  
21 could not get any cooperation credit?

22 A. So the memo on page 3 says, "In order for a company to  
23 receive any consideration for cooperation under the principles  
24 of federal prosecution of business organizations, the company  
25 must completely disclose to the department all relevant facts

1 about individual misconduct."

2 Q. Okay. I want to go on and talk about a memo that's more  
3 particular -- or a policy that's more particular to your unit,  
4 which is the FCPA Pilot Program.

5 You are familiar with that?

6 A. I am, although I will say that, when that came out in  
7 April 2016, I had just started at the fraud section.

8 Q. Understood. But you're familiar with it, right?

9 A. I'm familiar with it.

10 Which exhibit are you looking at?

11 Q. It's Exhibit 48.

12 A. Thank you.

13 Q. The date of this memo is April 5, 2016?

14 A. Correct.

15 Q. And this pilot program builds on the Yates Memo, correct?

16 A. I think that's probably fair. Does it say that in here?

17 Q. No. It says it in a speech that was given the same day,  
18 but --

19 A. Okay.

20 Q. Okay. And fair to say that the policies in this memo were  
21 designed to motivate companies to voluntarily self-disclose  
22 FCPA-related misconduct?

23 A. That seems right.

24 Q. And to fully cooperate with the fraud section?

25 A. Yes.

1 Q. And where appropriate remediate flaws in their controls  
2 and compliance programs, right?

3 A. Yes.

4 Q. And Cognizant in this case self-disclosed on September 1  
5 of 2016. Is that about right?

6 A. I wasn't there and I wasn't part of the case at the time.  
7 I joined the case in -- I think it was April 2018. But based  
8 on the documents I know that you showed Mr. Gingras this  
9 morning and ones that I've seen, that seems right.

10 Q. Okay. So based on the testimony and the documents, you  
11 have no quarrel with the fact that Cognizant self-disclosed on  
12 September 1st --

13 A. That seems right.

14 Q. Fair to say that Cognizant -- well, fair to say that if a  
15 company doesn't fully disclose, it risks indictment?

16 A. What do you mean if a company doesn't fully disclose?

17 Q. If a company doesn't fully cooperate.

18 A. Sorry. Are you speaking under the policy or are you  
19 speaking more generally?

20 Q. Either. Both.

21 A. So we don't indict cases based on cooperation. A case  
22 would be indicted based on the evidence.

23 Now, among the factors we consider under the Filip  
24 Factors, as Mr. Gingras testified earlier, as is in the United  
25 States Attorneys' Manual, we consider cooperation among the

1 factors.

2 Q. And the failure to cooperate could lead to a decision to  
3 indict or charge?

4 A. It's one of the factors we consider when determining the  
5 appropriate path or the appropriate avenue of prosecution, if  
6 any.

7 Q. Okay. Now, Cognizant itself believed or communicated to  
8 the department that it believed it would face serious  
9 consequences if it was prosecuted, correct?

10 A. Could you be more specific? In terms of what? At what  
11 point?

12 Q. Well, were you present --

13 MR. FINZI: Let's put up DX-17.

14 BY MR. FINZI:

15 Q. My first question will be whether you were present for  
16 this meeting.

17 A. I was --

18 Q. And --

19 A. I apologize.

20 This was the Filip Factors presentation in May of  
21 2018 --

22 Q. Okay. And in the course of the Filip Factors  
23 presentation --

24 A. I was just saying this was one of the first meetings I  
25 attended related to the case.

1 Q. As part of the Filip Factors presentation, did Cognizant  
2 highlight for the government the consequences it would face if  
3 it was prosecuted?

4 A. So one of the factors that companies typically discuss are  
5 collateral consequences. I believe Cognizant covered that.  
6 I'm just looking for it in the notes. If there's an area you  
7 wanted to refresh me on or if there's a particular --

8 Q. Yeah. Let's take a look at --

9 A. I --

10 Q. -- 211, the fourth attribution down.

11 A. Yup. Right. So this is where counsel for the company  
12 said, "The next is collateral consequences." And she went on  
13 to say, "we didn't think this was a large factor to you. It  
14 would not be good for the company if the company were  
15 prosecuted."

16 Q. And then lays out the consequences that the company might  
17 face from prosecution, right?

18 A. To some extent, yes.

19 Q. So is it fair to say that at this point for Cognizant, the  
20 choice was to fully cooperate and have a chance at cooperation  
21 credit or to not cooperate, lose the chance at cooperation  
22 credit, and risk the harms that Ms. Reummller laid out?

23 A. I can't really speak to the choice to the company. Any  
24 company can decide to cooperate or not.

25 I mean, you asked about the pilot program document.

1 At the end of it, it makes very clear, I believe -- I'd have to  
2 go back and find the specific language, but it said companies  
3 are free to decide to cooperate or not. They don't have to do  
4 it --

5 Q. I --

6 (Simultaneous crosstalk.)

7 A. They don't get the benefits under the program if they  
8 decide not to.

9 Q. But the DOJ sets up incentives that are designed to  
10 encourage them to cooperate, correct?

11 A. That's true, but not unlike an individual who cooperates  
12 and wants to get credit as part of a 5K.

13 Q. Understood. But it -- DOJ sets up policies that  
14 incentivize certain behavior and, for lack of a better term,  
15 punish other behavior?

16 A. It sets out incentives for companies that cooperate, yes.  
17 The sentencing guidelines also talk about cooperation.

18 Q. For the purpose of influencing their conduct?

19 A. I think it's to be transparent about what the benefits are  
20 if they cooperate.

21 Q. As part of Cognizant's cooperation -- and you were  
22 obviously here this morning; so maybe we can do this quickly,  
23 but I just want to make sure we're all on the same page.

24 As part of Cognizant's cooperation, Cognizant and its  
25 lawyers provided the government with a significant amount of

1 information in the course of this case?

2 A. Information -- information and documents, yes.

3 Q. Extensive interview downloads by the company?

4 A. They provided a number of those. I think the testimony  
5 earlier was about 40 or 44 maybe. That sounds about right.

6 Q. They -- and those downloads included downloads of  
7 interviews of Mr. Coburn and Mr. Schwartz; is that correct?

8 A. Correct.

9 Q. And as part -- in seeking cooperation credit at this  
10 meeting, Cognizant and DLA indicated that they had persisted in  
11 securing additional interviews of Mr. Coburn and Mr. Schwartz.

12 Do you recall that?

13 A. I recall you showing -- I recall -- I forget which counsel  
14 it was this morning showing Mr. Gingras the document. I think  
15 maybe Mr. Lustberg maybe showed him the Filip Factors notes,  
16 but if you want to --

17 Q. Let's take a look at DX --

18 (Simultaneous crosstalk.)

19 Q. Sorry. I didn't mean to cut you off.

20 A. I'm happy to take a look --

21 (Simultaneous crosstalk.)

22 Q. Let's take a look at DX-17 at the bottom of the page.

23 A. You're looking at extensive interview readouts?

24 Q. Yeah. I'm at -- sorry. Where they talk about --

25 THE COURT: This is the same passage that was

1 highlighted this morning? Is that what you're getting at?

2 MR. FINZI: Yes, Your Honor.

3 THE COURT: Then we don't need to spend too long on  
4 it.

5 MR. FINZI: Okay. Yeah, that's it.

6 BY MR. FINZI:

7 Q. Where Ms. Reummller says, "This is one category of  
8 proactive cooperation. Karl and his team persisted in securing  
9 additional interviews with the president and the GC."

10 A. That's what the company counsel said, yes.

11 Q. Company counsel told you that they had facilitated the  
12 DOJ's ability to interview people?

13 A. That sounds right.

14 Q. And that they had reviewed over one and a half million  
15 documents?

16 A. That sounds right. But you understand the Filip Factors  
17 presentation, that's an advocacy meeting where the company  
18 comes in to tout the things that they've done?

19 Q. Oh, a hundred percent --

20 A. Okay. I just wanted to --

21 Q. That's exactly what I'm getting at. The point is  
22 Cognizant touted all of this cooperation in its effort to  
23 obtain cooperation credit?

24 A. Its advocacy.

25 Q. Excuse me?

1 A. Its advocacy.

2 Q. Its advocacy. Okay. But you don't have reason to doubt  
3 it?

4 A. No. I mean, it depends which piece, but no. Those  
5 three -- those two or three things you just noted, no. Those  
6 seem correct.

7 Q. And as part of their advocacy, they highlighted the fact  
8 that they had provided information about their general counsel  
9 and that that was a big deal.

10 A. Could you be more specific?

11 Q. Yeah.

12 MR. FINZI: Can we take a look at page 6.

13 BY MR. FINZI:

14 Q. "Turned over general counsel notes. To distinguish  
15 Cognizant's conduct from other companies, turning over a GC's  
16 notes are a big deal."

17 Do you recall Cognizant emphasizing, as part of its  
18 cooperation, that it was turning over notes of its general  
19 counsel?

20 A. I mean, that's what Ms. Reummller said. That's what  
21 counsel for the company said.

22 Q. And my question is whether or not you recall that.

23 A. That sounds right. I'm certainly refreshed, looking at  
24 the notes, that she said that. Like I said, this was one of  
25 the first meetings I attended for this case.

1 Q. They also mentioned the hot document binders that they  
2 provided?

3 A. I recall seeing that --

4 Q. Ten different subjects?

5 A. I recall seeing in the notes about hot doc binders; I  
6 don't recall the number of subjects.

7 Q. You won't fight with me if I tell you it's ten, though?

8 A. If that's what the notes say.

9 Q. And more than 40 telephone updates?

10 A. That sounds right.

11 Q. And they to you -- I realize this isn't you saying it --  
12 but they to you described their cooperation as exemplary.

13 A. If that's what that it says in the notes. I don't recall  
14 that specifically, but if that's what it says in the notes.

15 And, again, just to be clear, some of the stuff they  
16 were talking about, like the 40 interview -- the 40 telephone  
17 calls, I had just joined the investigation. So I don't -- I  
18 hadn't participated in those; so I'm just saying -- if you're  
19 asking me if that's what's in the notes, that's what's in the  
20 notes.

21 Q. I'm asking purely what they're telling you --

22 A. Okay.

23 Q. -- not what you observed.

24 A. Understood.

25 Q. Okay. We're on the same page.

1                   And you started -- I should have put this in earlier,  
2 but you at some point had personal involvement in this case,  
3 right?

4 A.    Correct. Starting in --

5 Q.    So --

6 A.    -- I think it was April 2018, I became involved in the  
7 case. And then I took over from Mr. Gingras after he left. We  
8 overlapped for whatever it was, two months roughly, a month and  
9 a half. Then he left, and then I was -- I was the  
10 representative from the fraud section.

11 Q.    Okay. So you became, in essence, for lack of a better  
12 term, the fraud section line attorney on the case?

13 A.    Correct. And then I worked with two AUSAs on it, which  
14 was Courtney Howard and Nick Grippo.

15 Q.    So you participated in these meetings, the Filip Factors  
16 meetings?

17 A.    Well, this was the one -- Filip Factors meeting was in  
18 May 2018. I did then -- excuse me. Subsequently, I had  
19 additional meetings with the company, but I don't think any of  
20 them were Filip Factors presentations.

21 Q.    Okay. You participated in meetings about a possible  
22 resolution of the case?

23 A.    I think that was this.

24 Q.    Do you recall participating in discussions about what the  
25 appropriate monetary penalty might be?

1 A. I do recall that.

2 Q. Do you recall participating in meetings or correspondence  
3 involving the form of the disposition of the case, whether it  
4 would be a plea, a deferred prosecution agreement, a  
5 nonprosecution agreement, or a flat-out declination?

6 A. I don't recall meetings related to form other than the  
7 Filip Factors meetings. I do recall a meeting -- I don't know  
8 exactly when; it might have been July -- where we were talking  
9 about the -- the company presented with respect to the  
10 disgorgement, the amount that would be disgorged as part of a  
11 resolution.

12 Q. But fair to say that there would have been discussion  
13 about the form of the resolution with the company?

14 A. At some point.

15 Q. And fair to say that you would have participated in that  
16 discussion?

17 A. Yes.

18 Q. Fair to say that you would have been a decision maker or  
19 at least one -- somebody who made a recommendation with respect  
20 to that --

21 A. I would have made a --

22 (Simultaneous crosstalk.)

23 A. Sorry. I didn't mean to interrupt.

24 I would have made recommendation to my management  
25 within the fraud section, just as the AUSAs would have done to

1       their management at the U.S. Attorney's Office. Certainly, as  
2       a team, me and the two AUSAs would have discussed what we  
3       viewed as the appropriate disposition of the case.

4       Q.     Is it fair to say that Cognizant didn't just passively  
5       provide information as part of their cooperation?

6       A.     No, they were proactive.

7       Q.     And they were, or at least they told you they were,  
8       aggressive in their cooperation?

9       A.     I wouldn't view them as aggressive. I don't recall if  
10      they said they were aggressive.

11      Q.     You would or would not?

12      A.     I wouldn't make that assessment in terms of whether a  
13      company is being aggressive. I wouldn't have the ability to  
14      see that.

15      Q.     Do you recall whether or not they told you they had been  
16      aggressive in their cooperation?

17      A.     That sounds familiar from the Filip Factors presentation,  
18      but I don't recall specifically.

19      Q.     Real quick, let's go to page 5 of DX-17 and take a look at  
20      that.

21               If we look at the bottom, do you see where it says,  
22               "Cooperation -- in particular, willingness to cooperate in  
23               investigation of personnel"?

24               Did I read that right?

25      A.     That's what it says.

1 Q. And that Ms. Reummller then says the "Company has done  
2 everything in its power to investigate aggressively"?

3 A. That's what counsel for the company stated.

4 Q. So you don't quarrel with the fact that they took the  
5 position -- Cognizant took the position that it had cooperated  
6 aggressively and in particular with respect to the  
7 investigation of personnel?

8 A. I don't take issue with the fact that what it says in the  
9 notes is what counsel said to us.

10 Q. Did Cognizant and its lawyers sometimes express --  
11 withdrawn.

12 Did Cognizant and its lawyers sometimes draw  
13 conclusions about what they thought the evidence showed with  
14 respect to particular people?

15 A. Conclusions regarding what the evidence showed? Could you  
16 be more specific?

17 Q. Yes. So we talked about the fact that they proactively  
18 provided information, right?

19 A. Correct.

20 Q. And evidence?

21 A. Correct.

22 Q. Documents? Downloads?

23 A. Correct.

24 Q. But is it also fair that from time to time they expressed  
25 views on the culpability or nonculpability of certain

1 individuals?

2 A. I don't recall that.

3 Q. Okay. Let's take a look at DX-35, and in particular at  
4 page 5.

5 A. So this is a DLA Piper internal memo?

6 Q. Yeah. These are talking points. Do you see --

7 A. I --

8 Q. -- do you see up top, "The record contains no evidence  
9 that Karen" -- and the reference here is to Karen McLoughlin --  
10 "knew that an improper payment would be made or even  
11 considered"?

12 A. That's what it says.

13 Q. All right. And the next bullet, "The record contains no  
14 evidence that Karen was part of the inner circle of people  
15 discussing the demand/payment."

16 Did I read that correctly?

17 A. That's what it says in this DLA Piper memo, correct.

18 Q. So is it fair to say that sometimes they drew conclusions  
19 and provided the government conclusions as to the nature and  
20 state of the evidence of certain individuals?

21 A. I don't know if they actually conveyed this in this  
22 meeting. This meeting is from February of 2017. I was not on  
23 the case at the time. This is also an internal DLA Piper memo.  
24 I have no idea if that's what they actually said in the meeting  
25 when they ultimately met with the earlier team that had this

1 case at DOJ.

2 Q. Okay.

3 A. I can tell you that that's what it says in the memo,  
4 though.

5 Q. Yeah. Can we go to the first page.

6 A. I'm there.

7 Q. And does it refer to -- in the re: line, that's the  
8 subject?

9 A. It says, "Government Meeting Talking Points."

10 MS. KRAMER: Excuse me, Your Honor. We're  
11 encountering the same issue we had before the break in terms of  
12 this being a redacted document.

13 MR. FINZI: I won't go any further. I'll take it  
14 down.

15 THE COURT: Apparently no conference is needed.  
16 Problem solved.

17 MR. FINZI: I can move on, Your Honor.

18 BY MR. FINZI:

19 Q. So in addition to -- well, let me ask the question again.

20 Having seen what you've now seen, is it fair to say  
21 that DLA and Cognizant, in addition to just providing evidence,  
22 also provided thoughts or views on what the evidence showed?

23 A. No, I don't have a reason to know that. You showed me an  
24 internal DLA memo. I have no information if that information  
25 was actually conveyed to the government. As I also said, this

1 meeting occurred a year and months -- three months before I  
2 even joined the case.

3 Q. Okay. So you weren't there for that meeting. But at  
4 other meetings, did they reflect views on who was culpable?

5 A. Culpable? No. I mean they reflected, they told us about  
6 evidence in the case and what the evidence was that they had  
7 identified and --

8 Q. Did they --

9 A. -- they discussed evidence -- sorry -- they discussed  
10 aspects of the evidence. I don't recall them ever saying who  
11 was culpable.

12 Q. Then let's take a look at DX-17. We'll go back to page 1  
13 just to confirm.

14 THE COURT: Same one we've got the problem with?

15 MR. FINZI: No. This one's --

16 THE COURT: I thought that was the other one.

17 MR. FINZI: This one's all good.

18 BY MR. FINZI:

19 Q. So let's again, let's look at the top.

20 THE COURT: 17.

21 BY MR. FINZI:

22 Q. "Cognizant Filip Factors Presentation."

23 A. Correct.

24 Q. Are you with me?

25 A. Correct.

1 Q. It says who's there and who isn't -- sorry. Who's there  
2 at least. You're there?

3 A. Yes.

4 Q. As is Mr. Gingras?

5 A. Correct.

6 Q. And then there's lawyers from DLA Piper and lawyers from  
7 Latham, correct?

8 A. Correct.

9 Q. There's also an in-house attorney, Matt Friedrich from  
10 CTS?

11 A. Correct.

12 MR. FINZI: Can we go to page 3 and highlight right  
13 where you are, Jesse.

14 BY MR. FINZI:

15 Q. That there are references to bad actors?

16 A. It does say that.

17 Q. Okay. Is it fair -- I mean, you were at that meeting. Is  
18 it fair to say that part of what Cognizant did was to say that  
19 prosecuting Mr. Coburn and Mr. Schwartz was a sufficient  
20 alternative to prosecuting the company?

21 A. I don't recall them saying that.

22 Q. Okay. Do you recall under the Filip Factors the  
23 consideration of whether there are adequate alternatives to  
24 prosecution of a company?

25 A. Yes. I believe it speaks with respect to civil remedies.

1 Q. Not with respect to individuals, whether individual  
2 prosecutions are sufficient?

3 A. I'd have to look at the exact language. It does reference  
4 individual prosecutions, but I don't know if it's in the  
5 context of an alternative.

6 Q. Is it fair to say that one of the things that they  
7 pitched, Cognizant pitched, was that a prosecution and  
8 indictment of the company was not necessary because the  
9 individuals could be prosecuted?

10 A. I don't recall that.

11 MR. FINZI: Let's go, then, to page 5 and look at the  
12 second -- let's start with the bottom of the second paragraph.  
13 Yes, right there, if we can highlight that.

14 BY MR. FINZI:

15 Q. Do you recall them saying, in an effort to persuade you to  
16 give them credit, that the company had done the right thing and  
17 said, We know these guys engaged in the conduct and we will  
18 provide DOJ with what they need to make decisions?

19 A. That's what it says in the notes.

20 Q. Is it fair to read that as we, Cognizant, will provide  
21 you, government, what you need to make the decisions about  
22 prosecuting these men?

23 A. I read it as saying that the company did the right thing  
24 by self-disclosing. They identified criminal conduct, and they  
25 disclosed it to the department.

1           They also said that they proactively said by action  
2 that they cooperated because the company, as part of its own  
3 independent investigation, believed they engaged in misconduct  
4 and --

5 Q.    It says --

6 A.    Excuse me. If I can finish. And then they said they  
7 would provide to the DOJ the evidence, effectively, of what DOJ  
8 would need to make any decisions.

9 Q.    Does it say in that passage that the company says, "We  
10 know these guys engaged in the conduct, and we will provide the  
11 DOJ with what they need to make decisions"?

12           Did I read that correctly?

13 A.    That's what it says in the notes.

14 Q.    Let's go down to the next paragraph where Ms. Reummller  
15 says, after talking about not minimizing senior positions, "As  
16 a policy matter, that is what you guys want, to me.  
17 Prosecuting companies and the way that that has evolved, what  
18 you know deters conduct is bringing individuals to account."

19           Is it fair to say, Mr. Last, that what Cognizant and  
20 DLA are doing is telling you that prosecuting individuals is  
21 adequate and that the company itself should not be prosecuted?

22 A.    I think they are advocating to not be prosecuted and  
23 they're saying that "Prosecuting companies and the way that has  
24 evolved, what you know deters conduct is by bringing  
25 individuals to account." That's what it says in the notes.

1                   They also go on to say, "We own that they engaged in  
2 egregious conduct, but that fact is mitigated by everything  
3 else." I think Mr. Gingras talked about that a little bit this  
4 morning.

5 Q. Let me stop you first, the first part of your question.  
6 You said, "They were advocating to not be prosecuted," correct?  
7 It was just part of your answer here a minute ago.

8 A. Correct.

9 Q. And one of their arguments to not be prosecuted was that  
10 the individuals were the ones who had engaged in the wrongdoing  
11 and they were the ones that could and should be prosecuted.

12                   Isn't that, in essence, what that says?

13 A. I think they're saying the individuals could be  
14 prosecuted, yes.

15 Q. Is it also true that Cognizant assisted the government in  
16 locating a person who later became a cooperating witness?

17 A. In locating? I think they -- I would say they -- put us  
18 in contact with his counsel and we scheduled an interview.

19 Q. Is it fair to say that they encouraged that individual to  
20 cooperate with the Department of Justice?

21 A. That, I don't know.

22                   MR. FINZI: Okay. Let's take a look at DX-23.

23                   (Discussion off the record between counsel.)

24                   MS. KRAMER: I think if we can just put this on the  
25 record, to the extent counsel has any indication that it's

1 going to be using a previously redacted document, because we  
2 have not been provided with the exhibits, please refrain from  
3 displaying unredacted forms of the documents.

4 MR. FINZI: Okay.

5 (Discussion off the record between counsel.)

6 MR. FINZI: This has already gone up today. So I  
7 think we're good, Judge.

8 BY MR. FINZI:

9 Q. These are DOJ talking points of a call in October of 2016,  
10 correct?

11 A. You said DOJ talking points. These are notes received  
12 from DLA or from the company?

13 Q. Sorry. When I say DOJ talking points, the assumption here  
14 is that they're notes used for a call by DLA to DOJ.

15 A. Okay.

16 Q. And, in particular, I want to direct your attention to the  
17 second page where it says, "Coordinate Mani interviews in  
18 mid-November."

19 Did Cognizant and its lawyers tell the Department of  
20 Justice in October of 2016 that they would work with Mani and  
21 his counsel and that once he was "lawyered up, we hope he will  
22 continue to cooperate with the company and with the DOJ"?

23 A. So I wasn't on the case at that time. Obviously, this was  
24 a year and a half before I joined. But my understanding is  
25 that the company facilitated us having an opportunity to

1 interview Mani.

2 Q. But they didn't just facilitate it; they encouraged it.

3 A. I don't -- I don't know that. I had no reason to know  
4 that.

5 Q. You don't read, from what we see up on the screen, that  
6 they are encouraging Mani to cooperate?

7 A. Mr. Finzi, these are internal DLA talking point notes. I  
8 have no idea what was conveyed to the earlier team a year and a  
9 half before I joined the case.

10 Q. You were the supervisor in the unit?

11 A. I am now. I wasn't at the time.

12 Q. Do you have any reason to believe that those -- do you  
13 have any reason to believe those talking points were not  
14 delivered?

15 A. I don't know.

16 Q. Do you know who picked his lawyer?

17 A. I don't. I assume Mani did.

18 Q. Do you know if the company had any role in picking his  
19 lawyer?

20 A. I don't know.

21 Q. It was clear to you that Cognizant was --

22 MR. FINZI: Let me see if I can do this quickly,  
23 Your Honor. Can I have one second?

24 BY MR. FINZI:

25 Q. Cognizant, in fact, ultimately received cooperation

1 credit, correct?

2 A. Correct.

3 Q. And it received a declination letter on February 13, 2019,  
4 correct?

5 A. Correct.

6 Q. And that means they didn't get charged?

7 A. Correct.

8 Q. And that is the best of all possible outcomes for a  
9 company?

10 A. Well, the best would be a straight declination without  
11 disgorgement where we just decide to close our investigation.  
12 This was a declination with disgorgement, which is available  
13 under the pilot program and then later under the corporate  
14 enforcement policy where, if a company meets certain  
15 requirements, self -- voluntarily self-discloses, fully  
16 cooperates, and appropriately remediates, they can -- they can  
17 get a declination provided they also pay disgorgement.

18 Q. In the hierarchy of corporate resolutions, fair to say  
19 that the worst for the company is indictment and a plea?

20 A. Correct.

21 Q. Next worse is a deferred plea agreement?

22 A. Deferred prosecution agreement, but yes.

23 Q. Next after that is a nonprosecution agreement?

24 A. Correct.

25 Q. And last is a declination?

1 A. Declination with disgorgement, and then a straight  
2 declination with closure.

3 Q. And that's what Cognizant got in this case?

4 A. Declination with disgorgement, correct.

5 Q. Part of the reason they got that was for their  
6 cooperation, correct?

7 A. Among other things, yes.

8 And to be the clear, the other things are their  
9 voluntary self-disclosure and the remediation.

10 Q. You're aware that Cognizant has asserted privilege over  
11 certain documents in this case?

12 A. Yes.

13 Q. And fair to say that, even after you got involved in this  
14 case, the department and Cognizant had numerous discussions  
15 about privilege and about waiver as the case went on?

16 A. We definitely had discussions about their assertions of  
17 privilege, yes.

18 Q. And about possible waiver?

19 A. There was a 502(d) order that was entered, which was a  
20 selective waiver. So yes.

21 Q. And about the possibility of a crime fraud exception?

22 A. We discussed -- I recall asking how they had drawn lines  
23 and what they had produced as crime fraud, effectively.

24 Q. Those privilege issues were discussed as part of  
25 Cognizant's presentation in the Filip Factors meeting?

1 A. I don't recall in the Filip Factors, but if you want to  
2 point me to the page, I'm happy to take a look.

3 Q. You recall we looked at the fact that they turned over the  
4 general counsel's notes and they referred to that as a big  
5 deal?

6 A. I recall that that's in the notes, yes.

7 Q. And that they mentioned providing privileged information  
8 pursuant to the 503(d) order?

9 A. I don't recall that, but if it's in the notes, then it's  
10 in the notes.

11 Q. Okay. At this point, by October, the investigation is  
12 about two years old; is that right?

13 A. Sorry. You said --

14 Q. September 2016 to May of 2018.

15 A. I'm confused. You just said October.

16 Q. I'm sorry. My fault.

17 By the time of the Filip Factors presentation, the  
18 investigation was about two years old?

19 A. At the time of the Filip Factors presentation in May 2018,  
20 it was, yeah, about two years, about 20 months.

21 Q. And privilege had come up before. Maybe you aren't aware  
22 of it, but were you aware that privilege had come up several  
23 times before?

24 A. No. I think there was -- no, I can't speak to the prior  
25 conversations.

1 Q. And did you know that -- well --

2 A. I can't speak -- sorry. I can't speak to the prior  
3 conversations about privilege. If there's something you want  
4 to point me to, I'm happy to take a look.

5 Q. Cognizant had produced privilege logs in January of 2018?

6 A. That sounds right.

7 Q. At this point, at the time of the Filip Factors meeting,  
8 what was the DOJ's understanding of the scope of the waiver of  
9 Cognizant's privilege?

10 A. Scope of the waiver? Could you be more specific?

11 Q. Sure. So part of what they disclose is a telephone call  
12 involving the general counsel of the company, right?

13 A. Right.

14 Q. And it was a telephone call made for the purpose -- or at  
15 least to discuss a contract and a possible payment to a  
16 contractor, correct?

17 A. Well, it was a bribe to an official, but yes.

18 Q. Okay. And you are aware that there was discussions of a  
19 contract and a dispute as to who was responsible for getting a  
20 particular permit?

21 A. For getting a particular --

22 Q. Permit.

23 A. I do recall that being --

24 Q. So in allowing -- in providing you with notes of that  
25 conversation and in allowing you to question witnesses about

1 that conversation, Cognizant effected a waiver, correct?

2 A. I don't know if it was a waiver or if they produced it as  
3 not privileged, in other words, subject to crime fraud.

4 Q. So at this point in the -- two years into the  
5 investigation -- well, even to this day, do you know what the  
6 scope of Cognizant's waiver is?

7 A. I don't know the scope of the waiver. I do recall  
8 speaking to Cognizant's counsel to understand -- when we were  
9 discussing things related to privilege and the privilege log, I  
10 do recall trying to discern from Cognizant's counsel how they  
11 were drawing lines, what --

12 Q. Okay.

13 A. If I can finish. What --

14 Q. And --

15 A. Sorry. What had been produced pursuant to crime fraud,  
16 what had been produced pursuant to the 502(d) order, what had  
17 been produced otherwise that they otherwise would have deemed  
18 privileged but they had produced them. I was trying to get  
19 them to identify those lines. They ultimately did not. I  
20 believe the -- I believe Mr. Buch said that they viewed that as  
21 work product.

22 Q. Okay. Let's go through this one step at a time. Let's  
23 start with DX-82.

24 MR. FINZI: Let's highlight the top left, if we  
25 could.

1 BY MR. FINZI:

2 Q. And are these your notes?

3 A. These are my notes.

4 Q. And this is an indication of a call with DLA?

5 A. Correct.

6 Q. And it lists the participants, Karl Buch and Mr. Stratton,  
7 is it --

8 A. Yes.

9 Q. -- on DLA side and government lawyers on the left side?

10 A. Me and the two AUSAs, correct.

11 Q. And this conversation is on November 5th, correct?

12 A. Yes.

13 Q. And I'm going to direct your attention at some point to  
14 page 3 at the top. "Company has drawn lines." This may be the  
15 conversation you were referring to.

16 A. This --

17 Q. But before that, these questions about privilege and where  
18 the privilege lines were drawn, why did they arise on  
19 November 5th?

20 I'm sorry. I'm not trying to trick you. Withdrawn.  
21 Ask another way.

22 Isn't it true that we on the defense side raised the  
23 privilege issue early in November?

24 A. Yes, you all had raised an issue relating to privilege.

25 Q. And as a result of us raising an issue with respect to

1 privilege and how privilege lines had been drawn, you had a  
2 conversation with Mr. Buch and Mr. Stratton?

3 A. That was one of the reasons. We typically go through  
4 privilege logs during the course of an investigation anyway,  
5 but, yes, you raising it certainly was part of what factored  
6 in.

7 Q. Had you been through privilege logs, by the way, before --

8 A. Generally or --

9 Q. -- in conversations?

10 A. With counsel?

11 Q. Yeah.

12 A. I don't believe that I had. I don't know if the -- I  
13 don't know if the team that had the case before I joined it had  
14 done that.

15 Q. But the first time you discussed privilege or privilege  
16 logs -- withdrawn.

17 The first time you discuss privilege logs with DLA  
18 and Cognizant is in this call?

19 A. I believe that's right.

20 Q. And that's after we raised it?

21 A. Yes.

22 Q. And there's an attribution that says DAL -- that's you I  
23 assume?

24 A. That's me.

25 Q. And you say, "Company has drawn lines re materials and

1 produced" --

2 A. Would you like me to read it?

3 Q. Yeah, please. It would be quicker.

4 A. Happy to do that.

5 Just so you know contextually, you know, when I have  
6 the lines here showing initials, it's, to the extent I can,  
7 trying to denote who's speaking. So on the prior page, I'm  
8 noting what some of the other folks are saying. With this part  
9 I wanted to make it very clear the point I was drawing to  
10 Mr. Buch.

11 So what it says here is, "Company has drawn lines  
12 regarding materials" -- it should say "it has produced" -- I'm  
13 writing shorthand, and should say "we," meaning DOJ, we "want  
14 to ensure that all documents responsive and nonprivileged or  
15 that otherwise fall into a category of what was produced (crime  
16 fraud or otherwise)" -- doesn't say "we," but the import is we,  
17 meaning DOJ, want to make sure that we have that.

18 Q. And then --

19 (Simultaneous crosstalk.)

20 Q. -- there's a line under it that says, "Our obligations  
21 require that we make terminations re: exculpatory/favorable  
22 material."

23 Did I read that right?

24 A. Correct. So what I said to Mr. Buch was our obligations,  
25 meaning DOJ's -- our obligation as prosecutor, and we're

1 required that we make determinations regarding what's  
2 exculpatory and favorable material.

3 Q. And --

4 A. Sorry. Mr. Buch then responded that he -- they --  
5 Cognizant, DLA -- are not the government agent. I then  
6 responded I agree, which is why I underlined it three times. I  
7 said you're not our agent. It's the company's obligation to  
8 produce all responsive materials.

9 Q. Then it says, "We make assessment." Who's the "we" there?

10 A. The "we make assessment," the we is we, DOJ. We make the  
11 assessment regarding what's exculpatory. Then I say the  
12 company is to assess basis -- there, I think what I'm talking  
13 about is basis as to whether something is privileged. And then  
14 underneath it, I reference the grand jury subpoena that we sent  
15 them, I think, within a day or two after that.

16 Q. Is that the first grand jury subpoena served in this case  
17 to Cognizant?

18 A. To Cognizant, yes. But we served numerous ones --

19 Q. Why was it served --

20 (Simultaneous crosstalk.)

21 Q. Why was it served the day after privilege was raised?

22 A. That was when we determined to serve the subpoena.

23 Q. So the link between the privilege -- our raising the  
24 privilege issue and the department cutting the subpoena is  
25 coincidence?

1 A. It's not coincidence. We wanted to compel them to provide  
2 materials. To that point, they'd been providing materials  
3 voluntarily.

4 Q. Okay.

5 A. I wanted to issue a subpoena -- we, collectively as a  
6 team, wanted to issue a subpoena so the company would be  
7 compelled to produce material and that then they would produce  
8 what's responsive, not what they deemed relevant, not what they  
9 deemed interesting, but what was responsive. That would  
10 include both anything exculpatory and anything inculpatory.

11 Q. Well, but if it's exculpatory and privileged, then how do  
12 you get that?

13 A. I had no reason to believe that there was anything that  
14 was privileged that they were withholding that was exculpatory.

15 Q. Well, let's go back to the question we raised earlier.

16 "Company has drawn lines re: materials produced and wants to --  
17 and we want to ensure all docs responsive nonprivileged or that  
18 otherwise fall into categories of what were produced, crime  
19 fraud or other" --

20 A. Otherwise.

21 Q. -- "otherwise."

22 A. We want to make sure we had them.

23 Q. Yeah.

24 A. In other words, I want to make sure that we, as the  
25 prosecutors, have those materials.

1 Q. So you are asking Cognizant where is the line between what  
2 is privileged and what is not privileged?

3 A. No. I'm asking them to identify the line if they've  
4 produced things that are subject to crime fraud. I know they  
5 produced things pursuant to the 502(d) order. I wanted them to  
6 identify what those materials were so I could better understand  
7 where they were drawing the line as to those two issues.

8 Q. Okay. If they're withholding -- we are clear that there  
9 has been a privilege waiver, correct?

10 A. There's been a ruling in this case, yes.

11 Q. No. Sorry. Before the ruling in this case, you can agree  
12 that, either by virtue of a crime fraud exception or by virtue  
13 of a privilege waiver, Cognizant has produced material that  
14 would otherwise be privileged?

15 A. Correct. Cognizant did produce material that could  
16 otherwise have been deemed privileged.

17 Q. How do you know what they determined was the scope of what  
18 they would call privileged and what they wouldn't?

19 A. Could you repeat that.

20 Q. Yeah. How did the department know -- withdrawn.

21 Did the department ask how Cognizant, having waived  
22 privilege at least in some respect, determined what material  
23 remained privileged and what had been waived?

24 A. I was trying to discern the line of what they'd produced,  
25 where that line was, what they had designated as crime fraud

1 and what they had designated pursuant to the 502(d) selective  
2 waiver order.

3 Q. But you were just asking to identify the documents. You  
4 didn't talk about what is the subject matter that has been  
5 waived?

6 A. We did not talk about the subject matter, correct.

7 Q. And you didn't talk about the scope of whatever crime  
8 fraud exception they were using to produce privileged  
9 documents?

10 A. That's what I wanted to understand where they had drawn  
11 the lines.

12 Q. You told us --

13 A. That's why I asked.

14 Q. You just told us five minutes ago you never got the answer  
15 to where the lines were drawn.

16 A. I did not get the answer.

17 Q. So what happens next is --

18 MR. FINZI: If we could go to DX-81, please.

19 A. To 81?

20 BY MR. FINZI:

21 Q. Yeah. This is a letter. I believe you sign it, but I'm  
22 not sure. Yes, you sign it.

23 Tell me when you're through, Mr. Last.

24 A. I'm through.

25 Q. So this is a letter that you sent to the defense, right?

1 A. Correct.

2 Q. January 15th, 2020. So right about the time we're talking  
3 about here.

4 A. The time we're talking about here. What do you mean?

5 Q. Sorry. Later in the case but -- withdrawn.

6 This is January 15th of 2020, you send a letter to  
7 us.

8 MR. FINZI: If you can highlight, Jesse, the third  
9 paragraph, with respect to the privilege issues raised.

10 THE WITNESS: I see it.

11 MR. FINZI: Let's do the last line. No, sorry. The  
12 first one through determinations, please.

13 BY MR. FINZI:

14 Q. So here you report to the defense that the company has  
15 asserted privilege over its decision-making with respect to  
16 privilege.

17 A. Correct. That was what I referenced earlier.

18 Q. So the company would not tell you on what basis they  
19 determined whether a document was privileged or not privileged?

20 A. Correct. As I was saying earlier, I was trying to figure  
21 out the lines with respect to certain of these issues.

22 Q. And you never got that answer?

23 A. Correct.

24 Q. You said you had no reason to believe that there was  
25 anything exculpatory in the material that was being withheld as

1 privileged, correct?

2 A. Correct.

3 Q. But you asked Cognizant to go look for it anyway?

4 A. To go look for what?

5 Q. Excuse me?

6 A. To go look for what?

7 Q. To go look for whether there was exculpatory material in  
8 what they withheld as privileged.

9 A. No. We issued them a subpoena that would require them to  
10 produce anything that was exculpatory or inculpatory. I was  
11 very clear with Mr. Bruck that it was our job as the prosecutor  
12 to determine what would be exculpatory or inculpatory or  
13 otherwise.

14 MR. FINZI: Give me just one second, Your Honor.

15 Let's go to DX-82, please.

16 A. Which page?

17 BY MR. FINZI:

18 Q. There is a reference to -- give me one more second.

19 Here it is. Page before it. I'm sorry.

20 MR. FINZI: Sorry, one page before, Jesse. Okay.

21 The "Timing -- unclear -- running issues to ground,"  
22 can we highlight that.

23 BY MR. FINZI:

24 Q. These are your same notes, right?

25 A. These are the notes from November 5, 2018.

1 Q. And that's your handwriting?

2 A. My handwriting.

3 MR. FINZI: Let's highlight the PW allegations --

4 A. Do you want me to read that?

5 BY MR. FINZI:

6 Q. No, I got it.

7 "Paul, Weiss allegations re: exculpatory/favorable  
8 docs."

9 Did I read that right?

10 A. That's what it says.

11 Q. "Trying to understand line between crime fraud and  
12 selective waiver."

13 Did I read that right?

14 A. Yes.

15 Q. "Can look at what withheld and confirm if basis for  
16 privilege and whether crime fraud or other bases applies."

17 A. I think it says company, C-O. And so I think there what  
18 I'm doing is asking -- again, this is the same thing. I'm  
19 asking the company to tell us what the line was. I'm saying  
20 I'm trying to understand the line regarding crime fraud and  
21 selective waiver. I want the company to look at what it  
22 withheld and confirm for us and identify for us what had been  
23 produced pursuant to crime fraud or otherwise --

24 Q. So you don't --

25 (Simultaneous crosstalk.)

1 A. Sorry. If I can finish.

2 So we know where those lines are drawn.

3 Q. And now we've established we don't know where those lines  
4 are drawn?

5 A. They didn't respond --

6 Q. Because they asserted privilege over how they determined  
7 what was privileged and not and where the lines were drawn?

8 A. Correct.

9 Q. Now, you did not ask Mr. Buch and DLA to look and see in  
10 the privileged documents whether there was exculpatory  
11 information?

12 A. We did not.

13 MR. FINZI: Let's look, then, at DX-83.

14 BY MR. FINZI:

15 Q. These are again your notes?

16 A. These are my notes.

17 MR. FINZI: Let's highlight the upper left block just  
18 to make sure who's on.

19 BY MR. FINZI:

20 Q. David Last, that's you, DAL?

21 A. Correct.

22 Q. Courtney Howard?

23 A. Yes.

24 Q. Who's NG?

25 A. Nick Grippo.

1 Q. And KB and GS are Karl Buch --

2 A. And Gray Stratton.

3 Q. It's titled "Call with DLA."

4 A. Correct.

5 Q. It's 11/21 --

6 A. 2018.

7 Q. And that is -- in relation to the other notes we looked at  
8 where Paul, Weiss was raising an issue that's about two weeks  
9 later, 17 days; is that right? Is my math right? Something  
10 like that.

11 A. Three.

12 Q. About two weeks later.

13 MR. FINZI: Could we scroll down just a couple more  
14 lines.

15 BY MR. FINZI:

16 Q. According to your notation, it's Karl Buch who's speaking,  
17 right? Where it says "KB/"?

18 A. Yes, but where are you looking? I see. Never mind. I  
19 see.

20 Q. These are attributed to Karl Buch?

21 A. Yes.

22 Q. And he writes, "5K pulled for privilege." Presumably  
23 5,000 documents?

24 A. Yes. So this was -- this was, I believe, the -- we had  
25 issued the subpoena already. And so he's giving us an update

1 as to what they've -- what they -- what the timing is on  
2 providing us that and where things stand.

3 So yes, 5K is 5,000.

4 Q. And he says, "Two weeks to provide updated privilege log."

5 A. Correct.

6 Q. So we're talking about privilege here. He says, "Nothing  
7 new." Then he says, "Nothing exculpatory found to date."

8 A. That's what he said.

9 Q. If he hadn't been asked to review the documents withheld  
10 as privileged, why is he reporting to you that there's been  
11 nothing exculpatory found in them?

12 A. All I can think is that, in the last conversation that you  
13 just noted, I made very clear to him that determining what is  
14 exculpatory is our jobs as the prosecutor. I'd also referenced  
15 what Paul, Weiss's allegations were with regard to exculpatory  
16 material.

17 So my guess on this -- because I don't recall this  
18 call specifically -- is that Karl was just saying to us that  
19 they hadn't found anything exculpatory. But I was very clear  
20 to him that's not his job; that's our job as the prosecutors.  
21 And why he's telling me that, I don't know.

22 Q. But -- so when Karl Buch says to you, "nothing exculpatory  
23 was found to date," that is a cooperating company that is being  
24 left to make the determinations about what's exculpatory and  
25 what's not?

1 A. No, I don't agree with that.

2 Q. That would be wrong?

3 A. I told you what it said and I told you what Mr. Buch said  
4 and I told you what my perspective is on it. Your  
5 characterization, I don't view as correct.

6 Q. Well, can we agree that Mr. Buch at least thought he was  
7 looking for something exculpatory?

8 A. I don't know what Mr. Buch thought. You'll have to ask  
9 him.

10 Q. Well, I wasn't part of the conversation. But do you  
11 recall any part of the conversation where Mr. Buch is saying  
12 that the cooperating company is taking on the job of looking --  
13 finding whether or not there's exculpatory information?

14 A. No --

15 Q. You don't recall that?

16 A. No. I recall that in the notes from November 5th he  
17 specifically said that he, DLA, the company, are not our agent,  
18 to which I responded I agree and underlined it about ten times.

19 I do agree they're not our agent.

20 Q. So if you don't know how they've drawn privilege lines and  
21 you don't know how they've construed the crime fraud exception,  
22 how can you know whether or not there are exculpatory documents  
23 that are being improperly withheld as privileged?

24 A. Could you repeat that.

25 Q. Yeah. You don't know where the privilege lines are being

1 drawn?

2 A. Correct.

3 Q. You don't know where a possible crime fraud exception line  
4 is being drawn?

5 A. Correct.

6 Q. So there are documents that you can't see, correct, being  
7 withheld as privileged. But you can't even evaluate -- you  
8 don't have the bases upon which to evaluate whether they are,  
9 in fact, privileged or part of the crime fraud exception?

10 A. We reviewed the privilege log. And then we had multiple  
11 conversations with them about the privilege log.

12 Q. But I'm not talking about the privilege log; I'm talking  
13 about the concept, the larger one.

14 There has been a waiver, right?

15 They've allowed you to inquire -- they've allowed you  
16 to inquire about Steve Schwartz's communications as a lawyer.  
17 They let Mani talk about it. They let other people talk about  
18 it. They downloaded the contents of that conversation to you.  
19 That's a waiver. Can we agree on that?

20 A. Or a crime fraud.

21 Q. Or a crime fraud. But what's the scope of that waiver?

22 Is it just that phone call? Is it any bribe? Is it any bribe  
23 paid in India? Is it any conversation that Mr. Schwartz had?  
24 If you don't know the lines, what's the scope of it?

25 A. We asked the scope, and they didn't provide the scope.

1 MR. FINZI: Your Honor, may I have a moment?

2 May I have one moment, Your Honor?

3 THE COURT: You need to consult?

4 MR. FINZI: Yes.

5 THE COURT: Sure.

6 (Discussion off the record between counsel.)

7 MR. FINZI: I have nothing further.

8 THE COURT: Anything further from the defense side?

9 MR. LEWIN: No, Judge.

10 THE COURT: Government?

11 MR. FAYER: Yes, Your Honor. Brief cross-examination  
12 from the government.

13 THE COURT: Yes.

14 (CROSS-EXAMINATION)

15 BY MR. FAYER:

16 Q. Can you hear me? Good afternoon, Mr. Last.

17 A. Good afternoon.

18 Q. So Mr. Finzi referenced that Paul, Weiss had made  
19 allegations that Cognizant was hiding exculpatory material from  
20 the government; is that right?

21 A. Yes.

22 Q. And do you recall Paul, Weiss coming in to meet with the  
23 prosecuting attorneys in this case, including yourself?

24 A. Yes.

25 Q. Did that meeting take place on November 2nd of 2018?

1 A. That sounds right.

2 Q. And during that meeting did Mr. Finzi, Ted Wells, and  
3 other lawyers for Paul, Weiss make the allegation that  
4 Cognizant was asserting privilege over exculpatory material?

5 A. Yes.

6 Q. Did you give after that meeting Paul, Weiss an opportunity  
7 to point you to anything that could help you figure out what  
8 that exculpatory material was?

9 A. Yeah. So we exchanged a series of letters with Paul,  
10 Weiss to Mr. Schwartz's counsel on this issue. We asked them  
11 to point us to any issue relating to this, any -- to identify  
12 any documents, any issue, anything that would sort of lead us  
13 to what they were alleging. And they repeatedly refused to do  
14 that.

15 Q. Paul, Weiss refused to take up your opportunity to point  
16 you to the exculpatory information that they claimed that  
17 Cognizant was hiding from the government; is that right?

18 A. Correct. Not only to the actual information itself but to  
19 any information that would lead us to what they were alleging  
20 existed.

21 Q. In the four and a half years since that meeting has the  
22 government issued several reciprocal discovery requests to  
23 Paul, Weiss?

24 A. Yes.

25 Q. In those four and a half years has Paul, Weiss or anyone

1 else representing Mr. Schwartz disclosed any exculpatory  
2 information to the government?

3 A. No.

4 Q. In those years has Mr. Wells or Mr. Finzi or anybody at  
5 Paul, Weiss put any meat on the bone regarding their claim that  
6 Cognizant was hiding exculpatory information from the  
7 government?

8 A. No.

9 Q. Now, you testified on direct that Cognizant had withheld  
10 documents -- some documents as privileged; is that right?

11 A. Correct.

12 Q. And that makes sense because Cognizant is not on the  
13 government's team, right?

14 A. Correct.

15 Q. In fact, Cognizant was in possession of those privileged  
16 documents, not the government; is that right?

17 A. Yes.

18 Q. Now, in your career you've worked on cases where companies  
19 have produced privilege logs; is that right?

20 A. Yes.

21 Q. And based on your experience, is it common to challenge a  
22 privilege log in court?

23 A. No.

24 Q. When do prosecutors typically in your experience challenge  
25 a privilege log in court?

1 A. Usually where there's some obstruction or there's some  
2 other issue that's at play.

3 Q. That's not what happened in this case, though, is it?

4 A. No.

5 Q. In this case Cognizant was producing documents voluntarily  
6 to the government; is that right?

7 A. Correct.

8 Q. In this case Cognizant produced certain documents pursuant  
9 to a 502(d) order; is that right?

10 A. Yes.

11 Q. You issued a grand jury subpoena to Cognizant; is that  
12 right?

13 A. Yes.

14 Q. After issuing that grand jury subpoena to Cognizant, did  
15 you request an updated privilege log from Cognizant?

16 A. Yes.

17 Q. And did Cognizant produce updated privilege logs to you?

18 A. Yes.

19 Q. Did you flag -- did the prosecution team review those  
20 privilege logs?

21 A. Yes. We reviewed all the logs.

22 Q. What did the prosecution team do to review the privilege  
23 logs?

24 A. Sure. So collectively as a team, me and the two AUSAs  
25 that were on the case, we reviewed the privilege logs. And

1 what we would do is we would go through and highlight any  
2 material that seemed -- you know, that we wanted to either push  
3 back or ask a question about or get more information. And so  
4 then we did that with DLA, where we would have a conversation  
5 where we would go through with them the items on the log.

6 Q. So you highlighted certain entries that you had questions  
7 about; is that right?

8 A. Yes.

9 Q. And you forwarded those highlighted entries to Cognizant;  
10 is that right?

11 A. To DLA, but yes.

12 Q. Sorry. To DLA Piper; is that right?

13 A. Yes.

14 Q. And then you had calls with DLA Piper where they provided  
15 more information on some of the entries that you had questions;  
16 is that right?

17 A. Yes.

18 Q. And did DLA Piper also send the prosecution team certain  
19 letters providing additional information on the entries that  
20 you had discussed during those calls?

21 A. Yes.

22 Q. Did you have any reason to believe that DLA Piper was  
23 using privilege to hide exculpatory material from the  
24 prosecution team?

25 A. No.

1 Q. Were you satisfied with the explanations that you had  
2 received from DLA Piper about its assertions of privilege over  
3 its own documents?

4 A. Yes.

5 Q. Had you believed that DLA Piper was hiding anything from  
6 the government, would you have taken depositional steps to  
7 obtain the material?

8 A. Yes.

9 Q. If you had believed that DLA Piper or Cognizant possessed  
10 exculpatory material that it had not produced to you, how would  
11 that have impacted the investigation?

12 A. I would have not sought charges in this case.

13 MR. LUSTBERG: I'm sorry. We didn't hear that.

14 THE WITNESS: I would not have sought charges in this  
15 case.

16 BY MR. FAYER:

17 Q. Okay. I'd like to ask you just a few questions about the  
18 investigation in this case.

19 MR. FAYER: Your Honor, just so you're aware, we'd  
20 like -- for efficiency's sake, we'd like to have Mr. Last  
21 testify to these so we don't have to recall him to the extent  
22 that some of the questions I may ask him were not within the  
23 scope of what Mr. Finzi asked.

24 THE COURT: Yes, I think that's fine. If you need to  
25 examine him further on that material, of course you can do

1 that.

2 MR. FINZI: No objection.

3 BY MR. FAYER:

4 Q. So I believe you testified on direct examination that you  
5 began working on the Cognizant investigation in April of 2018;  
6 is that right, Mr. Last?

7 A. Yes. Correct.

8 Q. And in the course of working on the Cognizant  
9 investigation, did you review the case file?

10 A. Yes.

11 Q. Are you generally aware of investigative steps taken prior  
12 to joining the case?

13 A. Generally, yes.

14 Q. And obviously you're aware of investigative steps that  
15 were taken after you joined the case team; is that right?

16 A. Certainly.

17 Q. Prior to the indictment in this case, did the prosecution  
18 team interview approximately 23 witnesses?

19 A. Yes.

20 Q. Did the prosecution team rely on Cognizant to make the  
21 determination as to who -- which witness to interview?

22 A. No.

23 Q. Who made that determination?

24 A. We did as the prosecutors and with -- in conjunction with  
25 our FBI agents.

1 Q. And were some of those witnesses Cognizant employees?

2 A. Yes.

3 Q. And were some of those witnesses not Cognizant employees?

4 A. Yes.

5 Q. Was DLA Piper at any of the interviews you conducted of  
6 these witnesses?

7 A. No. Of course not.

8 Well, actually, there was one. There was one  
9 technical witness. I think he's -- he was an employee who  
10 could speak about the Tandberg videoconferencing system.  
11 That's why I think they represented him as his counsel. That  
12 was the only one.

13 Q. So other than the interview of the technical witness  
14 regarding the Tandberg records, DLA Piper did not participate  
15 in the government's interviews of witnesses in this case?

16 A. Correct.

17 Q. Now, the first interview in this case took place on  
18 February 7th, 2017. Does that sound right to you?

19 A. That sounds right.

20 Q. And that was of Srimanikandan Ramamoorthy, or Mani; is  
21 that right?

22 A. Correct.

23 Q. And before that interview took place, Cognizant produced  
24 over 5,000 pages of documents to the prosecution team. Does  
25 that sound right?

1 A. That sounds right.

2 Q. Prior to Mani's interview did the prosecution team prepare  
3 draft chronologies of documents?

4 A. Yes.

5 Q. Did Cognizant prepare those chronologies for the  
6 government?

7 A. No. The team prepared them. Our team, the prosecutors  
8 that preceded me prepared that.

9 Q. But you've reviewed the chronology so you know that they  
10 were prepared?

11 A. Correct.

12 Q. Prior to Mani's first interview, did the prosecution team  
13 issue preservation notices to various internet service  
14 providers?

15 A. Yes.

16 Q. Did the prosecution team also issue a preservation notice  
17 to Lawrence & Toubro [sic]?

18 A. Yes, L&T.

19 Q. Or L&T?

20 A. Yes.

21 Q. By the way, L&T, according to the indictment, is the  
22 company that paid the bribe payment to the government official  
23 on behalf of Cognizant; is that right?

24 A. That's correct. In the indictment, it's noted as "the  
25 construction company."

1 Q. And prior to Mani's first interview, the prosecution team  
2 issued grand jury subpoenas to JPMorgan and Verizon; is that  
3 right?

4 A. Yes.

5 Q. Did the prosecution take these various investigative steps  
6 independent of Cognizant or DLA Piper?

7 A. Yes. Completely independent.

8 Q. So, in other words, independent of whatever Cognizant was  
9 doing, the prosecution team was actively conducting its own  
10 investigation before it interviewed Mani on February 7th, 2017;  
11 is that right?

12 A. Correct.

13 Q. And those steps included analyzing the voluminous records  
14 that were coming in, seeking to preserve additional data, and  
15 issuing subpoenas to gather more information; is that right?

16 A. Yes.

17 Q. Now, the prosecution team in this case also arranged  
18 interviews without any facilitation from Cognizant; is that  
19 right?

20 A. Yes.

21 Q. So, for example, in May of 2018 did the prosecution team  
22 travel to Singapore to interview employees of L&T?

23 A. Yes.

24 Q. And over the course of five days in Singapore the  
25 prosecution team interviewed four L&T employees; is that right?

1 A. Correct.

2 Q. Did DLA Piper or Cognizant encourage the prosecution team  
3 to do these interviews?

4 A. No.

5 Q. Did DLA Piper or Cognizant participate in these  
6 interviews?

7 A. No.

8 Q. Did the prosecution team also request and receive  
9 documents from L&T?

10 A. Yes.

11 Q. Did the prosecution team meet with L&T's lawyers?

12 A. Yes.

13 Q. Did the prosecution team meet for individual counsel for  
14 the L&T witnesses?

15 A. Yes.

16 Q. And the prosecution team didn't tell Cognizant or  
17 DLA Piper about these meetings, did they?

18 A. No.

19 Q. So independently of Cognizant or DLA Piper, the  
20 prosecution team had these meetings, gathered evidence, and  
21 interviewed folks from L&T; is that correct?

22 A. Yes.

23 Q. In Mr. Schwartz's second interview by DLA Piper did he  
24 make reference to the fact that he was dealing with eye surgery  
25 on the week of the two calls that are at issue in the

1 indictment?

2 A. Yes.

3 Q. And those calls took place on April 21st and April 22nd,  
4 2014, right?

5 A. Correct.

6 Q. Did the government take any investigative steps to  
7 investigate Mr. Schwartz's claim that he was concerned about  
8 his eye surgery during that week?

9 A. Yeah. So we interviewed -- there were three doctors. We  
10 interviewed one of the doctors. Two of the others testified  
11 before the grand jury. And then we obtained medical records  
12 from all three.

13 Q. Did the prosecution team also learn that on April 22nd,  
14 2014, Mr. Schwartz attended a Mets game?

15 A. Yes.

16 Q. And that was on the day when Mr. Schwartz had one of the  
17 calls described in the indictment?

18 A. Yes.

19 Q. And on one of the days Mr. Schwartz claimed to be  
20 concerned about his eye surgery?

21 A. Yes. And we also obtained video footage of him at the  
22 game from, I think, a television station. And then we verified  
23 through StubHub that he'd purchased the tickets.

24 Q. Did DLA Piper tell you they obtained footage of  
25 Mr. Schwartz at the Mets game?

1 A. No.

2 Q. Did Cognizant encourage you to do that?

3 A. Not that I'm aware of, no.

4 Q. So the prosecution independently took these investigative  
5 steps; is that right?

6 A. Yes.

7 Q. Okay. As part of the investigation, did the prosecution  
8 team issue more than 25 grand jury subpoenas?

9 A. That sounds right.

10 Q. The first subpoena was issued in around November 2016?

11 A. Yes.

12 Q. And did you issue subpoenas all the way up to  
13 January 2019?

14 A. Yes.

15 Q. Did the prosecution team subpoena third parties other than  
16 Cognizant?

17 A. Yes.

18 Q. Credit card companies?

19 A. Yes.

20 Q. Phone companies?

21 A. Yes.

22 Q. Financial institutions?

23 A. Yes.

24 Q. DLA Piper have any role in the prosecution team seeking  
25 these records?

1 A. No.

2 Q. Prosecution team -- did the prosecution team obtain an  
3 order pursuant to 18 United States Code Section 2703(d) to  
4 obtain records from Yahoo for an email account in this case?

5 A. Yes.

6 Q. Did DLA Piper or Cognizant have any role in the  
7 prosecution team seeking this court order?

8 A. Not that I'm aware of, no.

9 Q. Over the course of the investigation, the prosecution team  
10 received a lot of documents; is that right?

11 A. Yes.

12 Q. Was there a system in place to review documents?

13 A. Yeah. So when we receive document productions in this  
14 case or any case in the unit -- this is common, I think, in  
15 white collar cases generally -- we put them into a system  
16 called Relativity where we can review documents in that type of  
17 platform.

18 In this particular case, we also used third-party  
19 document reviewers that reviewed documents for us. And then as  
20 part of the team, certainly once I joined the case, but I have  
21 every reason to think the prior team did this and I think  
22 Mr. Gingras testified to this earlier, that we as a team also  
23 review the documents. And so we sort of parse out, you know,  
24 through various methods of sort of analyzing the documents and  
25 trying to determine what's there and really get our arms around

1 what's there and what's the most relevant based on our own  
2 review.

3 Q. So you undertook your own investigation of the documents  
4 that Cognizant provided; is that right?

5 A. Correct.

6 Q. Did you ever direct Cognizant to perform interviews of its  
7 witnesses?

8 A. No.

9 Q. Did you ever tell Cognizant who to interview and when?

10 A. No.

11 Q. Did you ever tell Cognizant how it should interview a  
12 witness?

13 A. No.

14 Q. Did you ever tell a lawyer at DLA Piper to grill a witness  
15 like a prosecutor?

16 A. No, definitely not.

17 Q. Have you ever, in the course of your career, directed a  
18 company to perform an interview of a witness?

19 A. No. I've been a prosecutor for 17 years. I've never done  
20 that.

21 Q. Did you ever hear of anybody else on the prosecution team  
22 directing Cognizant to perform an interview of a witness?

23 A. No.

24 Q. So I think you testified a moment ago that Cognizant  
25 provided a lot of information to the prosecution team in this

1 case, right?

2 A. Yes.

3 Q. And did the prosecution team use the information that  
4 Cognizant provided derivatively to perform its own  
5 investigation?

6 A. Yes, just like we would with any cooperator. Just like we  
7 would -- when I was an AUSA in Washington, DC, where I was ten  
8 years, I had cooperators in cases. A cooperator provides  
9 information, you take the information and you use it for  
10 follow-on investigation. That's exactly what was done here.

11 Q. Does a corporate cooperator that provides exculpatory  
12 information receive any less credit for their cooperation?

13 A. No.

14 Q. Did the prosecution team ever control Cognizant?

15 A. No.

16 Q. Did the prosecution team ever use DLA Piper's offices?

17 A. No.

18 Q. Did the prosecution team ever use DLA Piper's computers?

19 A. No.

20 Q. Was Cognizant or DLA Piper part of the prosecution team?

21 A. No, absolutely not.

22 Q. Did you trust Cognizant or DLA Piper like you would an FBI  
23 agent?

24 A. No. The FBI agents and the prosecutors, we're part of our  
25 investigative team. We're law enforcement. We work together

1 as our team.

2 A company that's cooperating has very different  
3 interests and divergent interests from us. When a company is  
4 cooperating, again just like an individual cooperator, there's  
5 a certain healthy amount of skepticism when they're providing  
6 information.

7 And so I think Mr. Gingras also testified to this  
8 earlier as well, like, if you have cooperator that's providing  
9 information, you pressure-test it through other aspects of the  
10 investigation. We always conduct our own investigation, make  
11 our own assessments of the evidence.

12 Q. The prosecution team conducted its own investigation in  
13 this case; is that right?

14 A. Yes.

15 Q. It did its own interviews; is that right?

16 A. Yes.

17 Q. Made its own determination as to which witness was  
18 credible; is that right?

19 A. Yes.

20 Q. And who made the ultimate decision to charge the case?

21 A. We did as the prosecution team.

22 MR. FAYER: One moment, Your Honor.

23 Thank you.

24 THE COURT: Okay. There was some new material there.  
25 So I'll hear you.

1 MR. FINZI: Yes.

2 (REDIRECT EXAMINATION)

3 BY MR. FINZI:

4 Q. Can you hear me okay?

5 A. Yes.

6 Q. Mr. Last, you testified -- there was a long string  
7 questions about work that the DOJ did early in the  
8 investigation, but you weren't there for that, correct?

9 A. Correct. I joined in April 2018.

10 Q. So anything you're telling us about pre-April 2018 is just  
11 based on what you've heard from others?

12 A. And what I've seen in the case file.

13 Q. Okay. Fair.

14 There was some discussion about inviting the defense  
15 to provide exculpatory material or evidence -- I think --  
16 sorry. Withdrawn.

17 You were asked some questions by Mr. Fayer, I think,  
18 about whether the defense had been invited to produce material  
19 and provide information to substantiate that there was  
20 exculpatory material behind the privilege, correct?

21 A. Mr. Fayer was asking and I think my answer was whether  
22 Mr. Schwartz's counsel -- after making those allegations, we  
23 had asked you all, respectfully, to point to either that  
24 evidence or to any information related to that evidence, and  
25 you and Mr. Schwartz's other counsel declined.

1                   MR. FINZI: Can we take a look at -- I think it's a  
2 new GX number. I forget what our last number is. We can  
3 just -- let's set the stage here.

4 BY MR. FINZI:

5 Q. Do you recall that we were supposed to come in for a  
6 meeting on Friday, November 2nd?

7 A. Yes.

8 Q. And that was the meeting you were referring to where  
9 Mr. Wells, myself, and some others were going to come in to  
10 talk about the case?

11 A. Yes.

12 Q. And before we could even get there, you sent us an email,  
13 correct?

14 A. Yes.

15 Q. And it attaches a letter relating to that very meeting?

16 A. Correct.

17                   MR. FINZI: Can we look at the letter?

18                   THE WITNESS: Is this an exhibit in the binder?

19                   MR. FINZI: No, it's a new exhibit.

20                   Your Honor, I'll mark it later, if it's okay. I just  
21 don't have a number.

22                   THE COURT: Does anybody have handy what the last  
23 number was?

24                   MS. COLLART: 138.

25                   MR. FINZI: 138, Your Honor.

1                   THE COURT: We're going to call this 138? Go ahead.

2 BY MR. FINZI:

3 Q. Isn't it true that, rather than invite us to provide  
4 information, you warned us not to provide information and  
5 threatened that, if we disclosed information that might be  
6 privileged -- not threatened; threatened is too strong a  
7 word -- you reminded us of obligations under the New Jersey  
8 professional rules and trust you will not disclose any  
9 potential privileged information during our meeting?

10 A. What we wrote is we assumed that you have complied with  
11 your ethical obligations. I assume you would.

12 Q. Okay. So when you said a few minutes ago that you invited  
13 us to give you information, in fact, you were telling us, be  
14 careful what information you give me because it might be  
15 privileged and you might be violating your ethical rules?

16 A. So these weren't the letters I was speaking with. This is  
17 the letter that came before that meeting.

18                   At the meeting you all made the allegation that  
19 there's this information that Cognizant was withholding as  
20 privileged but that you said was exculpatory.

21                   We then sent follow-on letters and exchanged a number  
22 of letters -- I don't know if it was two or three iterations  
23 between the two sides -- about this issue where we said, if  
24 you're aware of information, please identify it for us, even at  
25 a minimum by just identifying the date, subject matter, just

1 anything that would be a clue as to what it was. And you  
2 continuously refused to do that. And I think our final letter  
3 was quite clear on this point.

4 Q. Whose obligation is it?

5 A. To do what?

6 Q. To find exculpatory material. Mine or yours?

7 A. The government identifies exculpatory information.

8 However -- excuse me -- if I had defense counsel's claim  
9 that --

10 (Reporter admonishment.)

11 THE WITNESS: I speak very fast. I apologize.

12 A. In my career, when other defense counsel have raised this  
13 when there has been exculpatory information, they have been at  
14 least willing to provide some indication as to what it is to  
15 point in the correct direction. You were not willing to do  
16 that.

17 It's not your obligation to do that, if that's your  
18 question. It is not your obligation. However, if you are  
19 suggesting that this existed and that we were blind to it and  
20 we weren't able to find it and it was being hidden from us,  
21 providing some indication, some clue as to what it was, if it  
22 really did exist, would have seemed reasonable. But you  
23 declined to do that.

24 Q. I'm not suggesting, Mr. Last, that you saw it and didn't  
25 give it. I'm suggesting that you don't know what's behind the

1 curtain and you don't know how long or wide the curtain is.  
2 They have not told you what the scope of their waiver is or  
3 what the scope of the crime fraud exception is. How can you  
4 possibly know whether or not there's material that should be  
5 turned over that hasn't been if you don't know that?

6 A. My point, Mr. Finzi, is that, if you are alleging that  
7 this existed, providing some indication as to what it was  
8 seemed reasonable. You declined. And that's your prerogative  
9 to do.

10 Q. In the 17 years that you've been a federal prosecutor have  
11 you ever come across a case where you have asked a company to  
12 define the scope of their waiver and they have said no, even  
13 just the definition of the scope of my waiver is privileged?  
14 In your 17 years, has that happened?

15 A. I don't know that I've asked a company to identify the  
16 scope of --

17 (Simultaneous crosstalk.)

18 Q. In the 17 years that you've been a prosecutor have you  
19 ever had a situation involving a crime fraud exception where  
20 you don't know what the scope of the crime fraud exception is?

21 A. I don't follow your question.

22 Q. So if something is nonprivileged because of crime fraud --  
23 take, for example, the phone call that Mr. Schwartz and  
24 Mr. Coburn are alleged to have participated in. You said  
25 earlier that that may have fallen under the crime fraud

1 exception, correct?

2 A. Correct.

3 Q. That crime fraud exception suggests a subject, there is  
4 some subject over which crime fraud applies?

5 A. Agree.

6 Q. You don't know the scope of that subject in this case  
7 because Cognizant wouldn't tell you?

8 A. Correct.

9 MR. FINZI: I have nothing further, Your Honor.

10 MR. FAYER: Nothing further from the government.

11 THE COURT: Nothing further from the government?

12 You may step down, sir. Thank you.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: This would be a good time for a 15-minute  
15 break.

16 (Recess taken 4:05 through 4:20 p.m.)

17 THE COURT: Everybody ready? Let's resume.

18 MR. LUSTBERG: Defense calls Karl Buch.

19 THE COURT: Bring Mr. Buch up.

20 KARL BUCH, DEFENSE WITNESS,

21 having been duly affirmed, testifies as follows:

22 THE WITNESS: I do.

23 THE COURTROOM DEPUTY: Thank you. Please have a  
24 seat. Keep the mic close to your mouth, speak loud and  
25 clearly. State your name for the record and spell it, please.

1 THE WITNESS: Sure. My name is Karl Buch, K-A-R-L,  
2 last name B-U-C-H.

(DIRECT EXAMINATION)

4 BY MR. LUSTBERG:

5 Q. So it's Buch?

6 A. Buch.

7 Q. I get that wrong all the time. Thank you for coming  
8 today, Mr. Buch.

9 How are you currently employed?

10 A. I'm a partner at DLA Piper.

11 Q. Any other employment?

12 A. No.

13 Q. And before you were -- how long have you been at  
14 DLA Piper?

15 A. About nine years.

16 Q. What did you do before that?

17 A. I worked in-house for a company.

18 Q. So that's all public. So it was Pfizer?

19 A. Correct, Pfizer.

20 Q. And before that?

21 A. I was in-house -- sorry. I was at a law firm, Chadbourne  
22 & Parke.

23 Q. I take it, then, before that you were at the  
24 U.S. Attorney's Office in New Jersey, right?

25 A. Correct.

1 Q. And from when to when were you an assistant U.S. attorney?

2 A. 2003 to 2008.

3 Q. And I take it that -- what did you do at the  
4 U.S. Attorney's Office? What was your area?

5 A. I was in several different units, including  
6 counterterrorism, securities, healthcare fraud, general -- you  
7 know, general crimes.

8 Q. I'm sorry. For how long were you at the U.S. Attorney's  
9 Office?

10 A. Well, I think 2003 to 2008.

11 Q. Okay. Five years.

12 I take it that you developed close relationships with  
13 people at the U.S. Attorney's Office when you were there?

14 A. Sure.

15 Q. And, in fact, some of the alumni of that office are people  
16 who represent other employees of Cognizant in this matter,  
17 right?

18 A. Correct.

19 Q. Were those people brought into this case by you?

20 A. Their clients decided to bring them in.

21 Q. Were they recommended -- did you make recommendations?  
22 I'll be specific, the ones I know about. Carlos Ortiz?

23 A. True.

24 Q. You recommended Mr. Ortiz, and I can't remember who his  
25 client is. Who's that?

1 A. I don't remember.

2 Q. John Kearny?

3 A. Yeah. Typically, my practice would be to recommend  
4 multiple lawyers to a client or to, you know, an employee of  
5 the company and sort of let them make a decision to choose  
6 either one of those or anybody else that they might have in  
7 mind.

8 Q. Of course, the decision is theirs. But I'm just asking  
9 who you referred.

10 And with regard to Mr. Ortiz and Mr. Kearny, those  
11 are people to whom you referred various Cognizant employees; is  
12 that right?

13 A. Yeah. I think, Mr. Lustberg, we also, you know,  
14 recommended at one point two attorneys from Gibbons to people  
15 within the company as well.

16 Q. Good thing that didn't happen.

17 And the last one was Matt Beck. Was he a person that  
18 you recommended to anybody, to Mani in particular, with regard  
19 to this --

20 A. I actually didn't recommend him. I recommended his  
21 partner, Jeff Chiesa.

22 Q. Got it. Have you had cases other than this one involving  
23 the U.S. Attorney's Office for the District of New Jersey while  
24 you've been -- well, first let's start with DLA.

25 A. Yes.

1 Q. How about when you were at Chadbourne & Parke?

2 A. I don't remember. I just don't remember.

3 Q. Did you interact with that office at all in your  
4 capacity -- in-house capacity at Pfizer?

5 A. I don't remember.

6 Q. Okay. I want to just discuss briefly with you the facts  
7 underlying your becoming involved in this matter. How did that  
8 happen?

9 A. Sometime in late April of 2016, I received a call about a  
10 matter for Cognizant involving certain claims.

11 Q. I'm sorry. You said you received a call?

12 A. Correct.

13 Q. Who did that call come from?

14 MS. KRAMER: Your Honor, I'm just going to  
15 preemptively object to the extent that the answer to these  
16 questions relate to anything that's privileged, whoever the  
17 call was from and what was discussed during that call.

18 THE COURT: Well, let's take it one at a time.

19 Are we going to be talking about calls seeking legal  
20 advice?

21 MR. LUSTBERG: I was just asking how he -- how he got  
22 involved in the case. So, no, I won't be asking about legal  
23 advice. I promise.

24 BY MR. LUSTBERG:

25 Q. Who called you?

1 A. My partner.

2 Q. And which partner was that?

3 A. Mike Hynes.

4 Q. My question -- I want to understand why -- so why did he  
5 call you?

6 A. I don't know.

7 Q. There was no discussion of why he decided that you were a  
8 good person to work with on this case?

9 A. I don't remember.

10 Q. Okay. Well, let me ask you this: Was there any  
11 discussion about the fact that this might be a good case for  
12 you to become involved in because it might be in the  
13 U.S. Attorney's Office for the District of New Jersey?

14 A. I don't remember that conversation ever occurring.

15 Q. So when you say you don't remember, are you saying that  
16 that didn't happen or you just don't remember whether there was  
17 a discussion like that?

18 A. I don't think that ever happened.

19 Q. Okay. How about the fact that you had particular  
20 experience with the Foreign Corrupt Practices Act? I'm not  
21 going to ask about legal advice you gave; I'm just asking  
22 whether that was a reason why you were asked to become involved  
23 in this case.

24 A. I don't think so. I don't remember that anyway.

25 Q. Pardon me?

1 A. I don't remember that discussion.

2 Q. Well, you did, in fact, have FCPA experience at that  
3 point, didn't you?

4 A. Correct.

5 Q. And come to the FCPA experience you had at Pfizer, but did  
6 you have other FCPA experience beyond Pfizer?

7 A. Yes.

8 Q. What was the other FCPA experience that you had?

9 You don't have to talk about specific cases, but had  
10 you had cases at the U.S. Attorney's Office? Had you had cases  
11 at Chadbourne & Parke? What was your FCPA experience?

12 A. I remember having one matter involving the FCPA while I  
13 was an assistant U.S. attorney. I certainly had cases  
14 involving the FCPA at Chadbourne & Parke and at Pfizer.

15 Q. So had you had any prior FCPA cases at DLA before this  
16 one?

17 A. Yes.

18 Q. Okay. Many? A few? How many? Can you quantify that at  
19 all?

20 A. So is your question did I have many FCPA cases before --

21 Q. Can you estimate --

22 A. -- while -- sorry -- while I was at DLA?

23 Q. Yes.

24 A. No.

25 Q. Let's --

1 A. Or maybe you can define "many." I certainly had some,  
2 Larry -- Mr. Lustberg.

3 Q. That's okay.

4 So the FCPA -- okay. So you had a few less than  
5 five? less than ten? Can you say? I'm just trying to gauge  
6 why it was that you were brought into this matter. I'm trying  
7 to really get at that issue.

8 A. So I -- so to try to answer that question, I think -- I  
9 was living in Hong Kong at the time, conducting an  
10 international investigation while I was in that office, and  
11 maybe the proximity to the allegations being in India was the  
12 reason why.

13 Q. That's helpful. So at the time of this case you were  
14 living in Hong Kong?

15 A. Correct.

16 Q. And working in a DLA office there?

17 A. Correct.

18 Q. How long were you in Hong Kong?

19 A. I think approximately a year.

20 Q. So I wanted to just talk about -- just briefly about your  
21 FCPA experience at Pfizer. Just reading from your DLA bio, it  
22 says, "Most immediately, Karl joined DLA Piper from Pfizer,  
23 where he was an assistant general counsel in the government  
24 investigations group. At Pfizer, Karl's responsibilities  
25 included managing government and regulatory investigations

1 across the company's global operations. He interacted with  
2 prosecutors' offices in the United States and abroad regarding  
3 a variety of areas of law, among them the Foreign Corrupt  
4 Practices Act and tax and environmental matters."

5                   Would you view that as an accurate description of  
6 what you did at Pfizer?

7 A. Yes.

8 Q. Thank you.

9                   With regard to the specific FCA experience that you  
10 had at Pfizer, am I right that that specific experience was one  
11 in which Pfizer had self-reported to the Department of Justice?  
12 Am I right about that?

13 A. So, Mr. Lustberg, you said FCA. So are you talking about  
14 the False Claims Act?

15 Q. I said FCPA.

16 A. No, no. I heard FCA.

17 Q. Sorry. I do FCA stuff; so maybe I got them confused. I'm  
18 focused completely on the FCPA.

19 A. Okay.

20 Q. So the Foreign Corrupt Practices Act, not the False Claims  
21 Act.

22                   So with regard to that False Claims Act, am I right  
23 that your experience --

24 A. You just said False Claims Act again.

25 Q. So this is really -- I mean, it is entertaining.

1                   With regard to the Foreign Corrupt Practices Act, am  
2 I right that your specific experience at Pfizer involved  
3 self-reporting to DOJ?

4 A.    No.

5 Q.    Okay. That's not what happened?

6 A.    Well, your question was whether that was my experience,  
7 and I think your question was ambiguous. That's why I answered  
8 no.

9 Q.    So I'm going to just -- rather than try to direct you in  
10 the right place, tell me why my question was ambiguous on what  
11 occurred with regard to Pfizer -- well --

12 A.    It wasn't clear to me, Mr. Lustberg, with whether you were  
13 asking about the initial decision to self-report or subsequent,  
14 you know, to that decision.

15 Q.    I was taking a look at the DOJ's press release with regard  
16 to that self-report, and it was clear that Pfizer had  
17 self-reported, had done a thorough and wide-reaching  
18 self-investigation of the underlying and related conduct. And  
19 not to be opaque here, I'm reading from the press release.

20                   Talks about the significant cooperation provided by  
21 the company to the department and the SEC and the early and  
22 extensive remedial efforts and the substantial and continuing  
23 improvements Pfizer, Inc., has made to its global  
24 anticorruption compliance procedures.

25                   My question is were those things that you were

1 involved in, any of those things, when you were at Pfizer?

2 A. Yes.

3 Q. Explain what it is that -- what your role was with regard  
4 to Pfizer's self-report.

5 MS. KRAMER: Your Honor, apologies. Appreciate we're  
6 here to represent Cognizant's interests, but to the extent  
7 Mr. Lustberg is asking Mr. Buch about the substance and scope  
8 of his prior representation of Pfizer, who counsel is not here,  
9 we wanted to object to that basis.

10 MR. LUSTBERG: Respectfully, Judge, I mean,  
11 Ms. Kramer represents Cognizant. How is she offering an  
12 objection on behalf of Pfizer?

13 THE WITNESS: I still represent Pfizer, and I'm not  
14 comfortable answering that question either. I would like to  
15 lodge a similar objection. So...

16 THE COURT: Yes, listen, we have some attorney  
17 witnesses here who can take care of themselves, but we -- let  
18 me make a more global comment, which is we don't need too much  
19 on his background at Pfizer, do we?

20 MR. LUSTBERG: This is the last question I was going  
21 to ask.

22 And all I wanted to ask about was what role he played  
23 with regard to the self-reporting. And I'm not sure I  
24 understand why that's privileged, confidential, or otherwise --  
25 I mean, the fact that he was there was public, the fact that

1 Pfizer self-reported was public, and I just wanted to know what  
2 his role was. And I'm not sure I understand what the objection  
3 to that is.

4 THE COURT: I think he can generally describe his  
5 role without talking about any advice he gave or anything like  
6 that, just "I was in charge" or "I obeyed orders" or whatever  
7 it was.

8 MR. LUSTBERG: That's fine.

9 BY MR. LUSTBERG:

10 Q. So you heard the Court's question.

11 A. Can you repeat the question, Larry -- Mr. Lustberg.

12 Q. So the question is -- the question I asked was, without  
13 providing any attorney-client privileged information that you  
14 provided while in that capacity, just generally, what was the  
15 role you played with regard to Pfizer's determination to  
16 self-report and the actions they took in self-reporting?

17 A. I would have been responsible for directing investigations  
18 which included outside counsel involving potential -- you know,  
19 potential issues under the Foreign Corrupt Practices Act. I  
20 had --

21 Q. Not under the False Claims Act?

22 A. Not the False Claims Act.

23 Q. Sorry. Couldn't resist.

24 THE COURT: I think that's about as far as you can go  
25 with that one.

1 MR. LUSTBERG: I think it's still pretty funny.

2 THE COURT: No, I didn't mean that joke; I meant that  
3 issue.

4 BY MR. LUSTBERG:

5 Q. Beginning in the approximately 2017 time period, after the  
6 Yates Memo and after the Foreign Corrupt Practices Act Pilot  
7 Program, it seems that you've written a number of articles with  
8 regard to those two pieces of DOJ guidance; is that right?

9 A. Correct.

10 Q. I'm just going to point you to a few. And if you need to  
11 look at them, they're in the binder; but maybe we can save some  
12 time by not doing that.

13 There was an article dated November 30th, 2017 --  
14 it's Exhibit 50 in your binder if you want to look at it --  
15 entitled "New FCPA enforcement policy presumes declination for  
16 companies that voluntarily disclose, cooperate, and remediate."

17 Do you see that?

18                   And, by the way, there's also screens and that kind  
19                   of thing.

20 A. I'm sorry. I just didn't hear the last bit.

21 Q. I just said that if you want to look at -- oh, actually --  
22 okay.

23 A. Thank you.

24 | Yeah, I'm familiar with this.

25 Q. That was an article that you wrote, right?

1 A. I was one of the authors on it, correct.

2 Q. And the article says that the new policy provides greater  
3 incentives for companies to self-disclose potential FCPA  
4 misconduct and cooperate with federal prosecutors.

5 And then it goes on to advise companies how to get  
6 those benefits, including with regard to providing information  
7 about high-level corporate individuals.

8 And my question is what was your purpose in writing  
9 that article?

10 A. Providing information about the new policy to people who  
11 were interested in the topic.

12 Q. Okay. Again, just to be clear, so the new policy was  
13 what?

14 What was the new policy that you were writing about?

15 A. This is the -- let's see.

16 It says new FCPA enforcement policy.

17 Q. Am I right that that new FCPA enforcement policy did at  
18 least two things; one is that it made it more possible to get  
19 lenient treatment, up to and including declinations, by virtue  
20 of self-reporting?

21 A. I think that's correct.

22 Q. And it also focused, as the Yates Memo had -- and you're  
23 familiar with the Yates Memo, right?

24 A. A lot of these memos come and go; so I'm generally  
25 familiar with it, yeah.

1 Q. And your general familiarity with it teaches that it  
2 encourages individual accountability. It encourages  
3 corporations to not only cooperate in the way they might have  
4 before but to point the finger at individuals in the corporate  
5 setting; is that fair?

6 A. I'd like to see a copy of that.

7 Q. Of the Yates Memo?

8 A. Yes.

9 Q. Oh, sure.

10 A. When you say "point the finger at that," can you just sort  
11 of explain to me what you mean by that?

12 Q. Sure. So the Yates Memo is, I believe, exhibit -- it is  
13 Exhibit 47.

14 A. Is there a particular piece of this you want me to look  
15 at?

16 Q. Sure. I'm just going to ask the question again.

17 The subject of the Yates Memo, Exhibit 47, is  
18 individual accountability for corporate wrongdoing, right?

19 A. Correct.

20 Q. And what does that mean?

21 A. Focusing on the individual actors who are responsible for  
22 the corporate wrongdoing.

23 Q. And one of the things that the Yates Memo sets forth is  
24 that if corporations do that -- in fact, corporations have to  
25 do that if they're to qualify for more lenient treatment by

1 DOJ; is that right?

2 A. Correct.

3 Q. So I was talking about your articles and the question --  
4 let me just continue to talk about a few others of them.

5 There's an article -- and this is Exhibit 45 in your  
6 binder -- dated July 10th, 2018, entitled "Declinations for  
7 self-reporting on the rise under FCPA Pilot Program and  
8 corporate enforcement policy."

9 And that makes clear, right, that this great result,  
10 which is a declination -- and just for the record, what's a  
11 declination?

12 A. That's a decision by the department not to bring charges  
13 against an individual or corporation.

14 Q. And that a declination is more possible -- I'm sorry -- is  
15 more possible than ever with full cooperation. And your  
16 article advises companies -- and you can take a look at it if  
17 you want and tell me if this is a mischaracterization. It  
18 advises companies how to effect such cooperation, right?

19 A. The document speaks for itself.

20 Q. It may, but I'm asking you if you think that's a fair  
21 description of it.

22 A. Let me take a look.

23 I think that's right.

24 Q. Thank you.

25 And you've written some more articles more recently,

1 because there have been some policies this year with the Monaco  
2 Memorandum and with the Southern District of New York guidance  
3 that -- which we don't have to go over, but if you want to look  
4 at them, you can. They're Exhibits 51 and 52.

5 But they stick with the themes that voluntary  
6 self-disclosure can really reap enormous benefits for  
7 corporations. And they instruct companies how to do that,  
8 right? Or advise -- advise -- you're advising colleagues about  
9 how to realize those benefits; is that fair?

10 A. Could you just ask that again. I'm a little confused by  
11 your question.

12 Q. Sure. Sure.

13 So I was just looking at your more recent articles.  
14 And those articles also emphasize the benefits to corporations  
15 of self-disclosure and of cooperation with the authorities.  
16 And you provide sort of a primer or advice in those articles  
17 with regard to how companies should go about doing that and  
18 their counsel?

19 A. I think we, in the articles, sort of summarize what the  
20 policy is and what the takeaways are. I don't think it  
21 provides any particular advice.

22 Q. Okay. Let me make sure that's true.

23 So just, if you would, take a look at Exhibit 51,  
24 page 5.

25 For the record, page 51 -- I'm sorry -- Exhibit 51,

1 DX-51, is an article written by you and others -- and tell me  
2 if I misdescribe this -- that says "DOJ announces policy  
3 changes and enhanced guidance for corporate compliance  
4 programs: Key takeaways."

5 That's what you were saying?

6 A. Correct. Correct.

7 Q. And if we look at the key takeaways which is on page 5, it  
8 talks about what companies should consider doing, right?

9 A. Correct.

10 Q. And it talks about revising policies and training  
11 employees and reviewing metrics and holding remedial trainings  
12 and the like, right?

13 A. Correct. That's what the document says.

14 Q. Okay. So with all that background and your expertise in  
15 this area, what do you view as the real advantages to a company  
16 of self-reporting to the authorities when they see an issue?

17 A. Well, I think there's the potential benefits that are set  
18 forth in the various documents and memos that you just  
19 described.

20 Q. Is that it?

21 A. Maybe you could be more specific.

22 Q. Sure. So one of the advantages, right, is that it helps  
23 companies that are facing potential problems get those problems  
24 resolved on what might be the best possible terms; is that  
25 fair?

1 A. When you say "best possible terms," what do you mean by  
2 that?

3 Q. If that's incorrect, just tell me. Aren't there  
4 advantages in terms of a way a case will go that -- if the  
5 company cooperates?

6 A. I think there's pros and cons to the decision to  
7 self-disclose. And the policy sets forth the potential  
8 benefits, including a declination or a reduction in a fine. So  
9 those are potential benefits of self-reporting.

10 Q. Okay. Thank you.

11 And isn't it also true that one of the advantages of  
12 self-reporting and of doing an internal investigation is to  
13 essentially engage in the investigative process yourself as  
14 opposed to having FBI agents crawling all over the company  
15 doing an investigation?

16 Do you view that as an advantage of -- you don't?

17 A. I think it's just going to depend on the facts of the  
18 case, the circumstances the company finds itself in.

19 Q. But based on your experience, isn't it the case that one  
20 reason why companies tend to self-report, to do their -- let me  
21 stop. Let me back up.

22 One of the reasons why companies tend to do their own  
23 internal investigation is so that they can gather the facts,  
24 present them to the government, and hopefully not go through  
25 the difficult process that occurs when the government is doing

1 an investigation.

2 Do you think that's fair?

3 A. Again, I think it's going to depend on the facts and  
4 circumstances the company finds itself in. And there's a lot  
5 of -- depending on those facts and circumstances, there's lots  
6 of decisions that a company can make about self-disclosure.

7 Q. I understand. But what I'm asking is, is one of the  
8 potential advantages of self-reporting -- and I understand that  
9 sometimes that advantage will be there and sometimes it won't  
10 be.

11 But one of the advantages of doing an internal  
12 investigation of its own is that the company may avoid a  
13 longer, more intrusive investigation by federal law enforcement  
14 or state law enforcement, for that matter?

15 A. My experience, it's a pretty rare event for a company to  
16 self-disclose. So I'm sort of having trouble with your  
17 question because I just don't understand -- I'm just having  
18 trouble following. I'm sorry.

19 Q. Okay. I am not going to belabor this, but I want to try  
20 it just one more time.

21 You've discussed how one of the advantages of  
22 self-disclosure is that there can be a more lenient penalty,  
23 maybe even no penalty at the end of the day; is that fair?

24 A. Under the government's policies that we talked about, yes.

25 Q. And my question is aren't there other advantages in terms

1 of the company getting to the facts, presenting them in a  
2 certain way, and potentially heading off more intrusive  
3 investigation?

4 A. I think where I'm struggling is you're talking about a  
5 situation where a company does an internal investigation and  
6 then decides to self-disclose as opposed to the more typical  
7 case where a company does an internal investigation and decides  
8 not to disclose.

9 Q. Fair enough.

10 A. So you're limited to the former situation, right?

11 Q. Right.

12 A. Right. The answer is yes.

13 Q. So when did Cognizant determine to self-report in this  
14 case?

15 A. Sometime in August, late August of 2016.

16 Q. And was -- let me ask it this way. I want to check on  
17 this document.

18 MR. LUSTBERG: Can you guys tell me is Exhibit 53 on  
19 your list of things that have redactions?

20 MS. COLLART: 53 of the hearing exhibits is a  
21 different motion.

22 MR. LUSTBERG: Sorry. Exhibit 53 on the list that  
23 you just got, which I can probably tell you what that is to our  
24 motion. Actually, it was Exhibit 4.

25 A. You want me to look at Exhibit 53?

1 BY MR. LUSTBERG:

2 Q. Just wait until we iron out this issue.

3 A. All right.

4 MS. KRAMER: Larry, it's redacted.

5 MR. LUSTBERG: Okay. We'll come back to it because I  
6 just don't want to go there.

7 BY MR. LUSTBERG:

8 Q. So what I've tried to stay away from, potentially  
9 privileged stuff right now, we may revisit it tomorrow when we  
10 finish it up. And we'll have you out of here for sure because  
11 I know you have a vacation starting at noon. I promise.

12 So from the time of the beginning of this -- of your  
13 work with Cognizant, you did a good amount of investigating,  
14 correct?

15 A. Correct. You mean -- just to be clear, investigations in  
16 general, not specific as to this matter?

17 Q. So now let's talk about this matter.

18 A. Okay. Because I wasn't sure of your question.

19 Q. Fair enough.

20 With regard to this matter when you first -- I think  
21 you said it was late April that you first became involved?

22 A. Correct.

23 Q. And did you -- and you had a team that worked with you to  
24 do an internal investigation of the issues that had been  
25 raised?

1                   And I'm not asking you what those issues are, but you  
2 had a team?

3   A.    Uh-huh.

4   Q.    Tell me how big that team was. How many people worked  
5 with you on this? Ballpark.

6   A.    It was a very small team. At the beginning it was me and  
7 probably two associates.

8   Q.    Okay. And you were still in Hong Kong at that time?

9   A.    I said correct. I'm sorry.

10                  MR. LUSTBERG: Thanks, Rhéa.

11                  BY MR. LUSTBERG:

12   Q.    According -- let me just see. When eventually this matter  
13 was self-reported, as of that time, I want to ask you about  
14 some of what had been done. Is it a fact that, by then, you  
15 had collected documentary and electronic evidence totaling in  
16 excess of 6.59 terabytes of information?

17   A.    I don't know.

18   Q.    So you don't know. Take a look if you would --

19                  MR. LUSTBERG: Don't publish this, please.

20                  BY MR. LUSTBERG:

21   Q.    -- DX -- Defendant Exhibit 56.

22                  MR. LUSTBERG: Can you guys let me know if that  
23 one -- what the status is on that one?

24                  BY MR. LUSTBERG:

25   Q.    For your -- to assist you here, I'm looking at page 3 of

1 4.

2 A. Page 3?

3 Q. Yeah.

4 MS. KRAMER: It's redacted.

5 MR. LUSTBERG: That section is redacted?

6 MS. KRAMER: Which section?

7 MR. LUSTBERG: II.D. It's not?

8 MS. KRAMER: No.

9 MR. LUSTBERG: Thank you.

10 So if we could just put up II.D on the screen, just  
11 make sure that's all you have. Just blow up II.D, please.

12 Thank you.

13 BY MR. LUSTBERG:

14 Q. So this document is talking points that were prepared for  
15 when you were going to report this to the government; is that  
16 correct?

17 If you look at the first page.

18 A. So these were talking points that were used for a  
19 particular meeting, but your question wasn't clear as to  
20 whether this was the initial report to the government or at  
21 some other point in time.

22 Q. Well, what was it?

23 A. So this was at some other point in time, I believe in  
24 October of 2016.

25 Q. It says, "Draft, August 31st, 2016," on the first page.

1 A. Okay. So then this is a script for the first call.

2 Q. So I just want to -- again, I'm trying to just pin down  
3 what you had done by the time of that first call.

4 A. Okay.

5 Q. By the time of that first call, you had issued multiple  
6 litigation holds. Do you know what those were? What the  
7 litigation holds --

8 A. What a litigation hold is?

9 Q. Sure. Start there.

10 A. It's a document that's presented to employees or other  
11 custodians to maintain their records and not destroy anything.

12 Q. And without saying who got them here, this was -- when you  
13 say you issued multiple litigation holds, you sent it around to  
14 a number of people in the company, that sort of document to  
15 assure that documents were not destroyed on purpose or  
16 inadvertently --

17 A. I think the company issued the holds, actually; but  
18 correct.

19 Q. And it said, "We have collected documentary electronic  
20 evidence currently totaling in excess of 6.59 terabytes of  
21 information."

22 Is that a lot?

23 A. That's what it says. I'm not an IT guy; so I don't know  
24 if that's a lot or not, but it sounds like it is.

25 Q. And "have interviewed over 25 witnesses in India and the

1       United States (including the president, general counsel, and  
2       chief financial officer)," right?

3       A.     I don't see that.

4       Q.     So that's the third bullet where -- there's a solid bullet  
5       and then there's three hollow bullets. And those --

6       A.     Is that page 2 or 3?

7       Q.     This is page 3 of 4 under the "What is the current status  
8       of the investigation?"

9       A.     Okay. I see that. It does say that.

10      Q.     So do you recall when you first contacted the government?  
11      Was it August 31st? I can show you a document if it would  
12      help.

13      A.     I think it was either August 31st or September 1st. That  
14      was the first time we contacted --

15      Q.     So let's take a look at Exhibit 55.

16                    MR. LUSTBERG: This one's definitely not privileged.

17                    I'm sorry. That was 55. Yes, Exhibit 55.

18      BY MR. LUSTBERG:

19      Q.     So this is an email from Jonathan Haray. Who's Jonathan  
20      Haray?

21      A.     He was a partner of mine at DLA Piper at the time.

22      Q.     And he worked on this matter with you?

23      A.     He did.

24      Q.     And he emailed somebody name Kara Brockmeyer at the SEC;  
25      is that right?

1 A. Correct.

2 Q. First of all, why her?

3 A. My recollection is at the time she was either the FCPA  
4 unit chief or some -- in some supervisory role, and she was the  
5 person to whom disclosures were typically made.

6 Q. The email starts, "Hi, Kara." Was she a person that  
7 Mr. Haray knew?

8 A. I don't know.

9 Q. And why did he go to the SEC first as opposed to DOJ  
10 first?

11 MS. KRAMER: Objection, Your Honor. The answer to  
12 this question possibly calls for privileged information  
13 regarding strategy calls between Mr. Buch and his then-partner.

14 MR. LUSTBERG: Your Honor, I don't see how -- I'm not  
15 asking for a particular --

16 THE COURT: I'll permit that. There's a question  
17 after that that could --

18 MR. LUSTBERG: I'm not going to ask the question.

19 THE COURT: -- that could involve privilege, but that  
20 question doesn't, I don't think.

21 A. I don't remember.

22 BY MR. LUSTBERG:

23 Q. So let me ask this question, then. And take a look at  
24 Exhibit 54.

25 So this is the next day, September 1st. Do you see

1 that?

2 A. I do.

3 Q. And this is -- by the way, both the last exhibit and this  
4 exhibit are ones where you're copied, right?

5 A. Correct.

6 Q. And this one says -- this is from Jonathan to Daniel Kahn.  
7 Do you know who Daniel Kahn is?

8 A. I do.

9 Q. Who is he?

10 A. He is an attorney who I think at the time was the head of  
11 the FCPA unit for the Department of Justice.

12 Q. Okay. And do you know if Jonathan Haray knew him?

13 A. I don't know.

14 Q. And do you know why Mr. Kahn was the person that Jonathan  
15 reached out for?

16 A. I think, like Ms. Brockmeyer, Mr. Kahn, as the head of the  
17 unit, was typically the person to whom disclosures -- you know,  
18 these initial disclosures were made.

19 Q. Okay. Do you know what was discussed between Mr. Kahn  
20 from the Department of Justice and you and Mr. Haray when you  
21 eventually spoke?

22 A. I think we had a discussion about the fact that Cognizant  
23 had identified or hadn't received -- or put it differently. A  
24 whistleblower had raised concerns about potential improper  
25 payment, and the company wanted to disclose that to the Justice

1 Department.

2 Q. Do you recall whether you or Mr. Haray -- or anybody else,  
3 for that matter -- mentioned the Yates Memo or the FCPA Pilot  
4 Program on that September 1st call?

5 A. I don't remember that, but I know we prepared some talking  
6 points in advance of that which may help refresh my  
7 recollection.

8 Q. Well, let's take a look at those. That's exhibit -- that  
9 is Exhibit 56. It's the one we looked at earlier.

10 If I can direct your attention to page 2. Let me  
11 just check with my colleagues.

12 MR. LUSTBERG: The third bullet point on the second  
13 page, is that redacted?

14 MS. KRAMER: That's okay, the third bullet point.  
15 There are redactions underneath that.

16 MR. LUSTBERG: Yeah. The fourth bullet point is  
17 redacted?

18 MS. KRAMER: Fourth is okay as well.

19 BY MR. LUSTBERG:

20 Q. So I want to just -- if you look at the third and fourth  
21 bullet points on the top of page 2 -- and by tomorrow, we'll  
22 have all this ironed out so I don't have to keep asking  
23 Ms. Kramer for -- and her team.

24 It says, "The company is not aware of any disclosure  
25 obligations in this or any other jurisdiction relating to the

1       facts under review. This disclosure is voluntary, and we would  
2       ultimately like to be considered for inclusion in the FCPA  
3       Pilot Program."

4                   So just to unpack that a bit, why is it important  
5       that there's no disclosure obligations in this or any other  
6       jurisdiction? Why is that part of that talking point?

7       A.    My recollection is that that's a requirement under the  
8       pilot program.

9       Q.    So I understand, that idea that you are attempting to  
10      be -- get the benefit of the FCPA Pilot Program was something  
11      that the board at Cognizant had already -- had urged you to  
12      request, no?

13                  MS. KRAMER: Objection, Your Honor. Calls for  
14      privileged information, discussions between counsel and the  
15      board.

16                  THE COURT: If the board is telling him to tell DOJ  
17      and the SEC, why is that not --

18                  MS. KRAMER: To the extent a conversation, Your  
19      Honor, with the board involved legal advice or guidance as to  
20      whether that was a good idea or not, that would be privileged  
21      information.

22                  THE COURT: Okay. But I think he was asking just a  
23      yes-or-no question. Did the board ask you to do that? And we  
24      can take it that far.

25                  MS. KRAMER: Okay.

1 BY MR. LUSTBERG:

2 Q. Just in this very same document, Exhibit 56, page 4, the  
3 second or third bullet point down it says, "On Wednesday  
4 august 31st, the board charged DLA with voluntarily reporting  
5 this matter to the DOJ and SEC along with its stated  
6 intention" --

7 MS. KRAMER: Mr. Lustberg, this is redacted.

8 MR. LUSTBERG: Okay. We'll just let the Court look  
9 at it, then.

10 BY MR. LUSTBERG:

11 Q. In response to your call on September 1st that we've been  
12 talking about with DOJ, what was the government's response?

13 A. I think they listened to the points that we made, and it  
14 was very -- it was a very minimal response. I don't remember  
15 exactly what they said, but there wasn't -- nothing sort of  
16 stands out about their response.

17 Q. Do you remember whether they asked any questions or made  
18 any requests at that time?

19 A. They must have asked some questions.

20 Q. Why do you say that?

21 A. About the company. You know, where they were located,  
22 things like that. But I don't ask -- don't remember them  
23 asking for -- or asking us to do anything, if that was your  
24 question.

25 Q. So take a look, if you would, at Defendants' Exhibit 2 and

1 in particular at the bottom of that page. This is an email  
2 dated Thursday, September 8th, from Mr. Haray to DOJ, and  
3 you're copied on it, right?

4 A. Uh-huh.

5 Q. It says, "Dan, I left you a voice message a moment ago to  
6 follow up on a question you asked us last week. Is there a  
7 good time to reach you this afternoon?"

8 Do you recall what that question was?

9 A. I don't recall the question being asked, but based on  
10 this, the full email, it appears that there may have been a  
11 request relating to personal email addresses.

12 MR. LUSTBERG: Your Honor, it's 5:12 or so. I'm  
13 about to get into a particular area that I'm not going to be  
14 able to finish up by 5:30.

15 THE COURT: If you're starting a new chunk of  
16 material, we might as well break now rather than have to recap  
17 in the morning.

18 MR. LUSTBERG: Okay.

19 THE COURT: Okay. We're going to break for the day.  
20 We will start at 9:00 sharp tomorrow, and I'll see you all  
21 there.

22 Anything we need to take up, take care of?

23 MR. LUSTBERG: I don't think so. We'll work with the  
24 Cognizant lawyers to try to avoid some of that back-and-forth.

25 THE COURT: With my prior rulings in mind, I saw some

1 areas for concern there.

2 MR. LUSTBERG: Yeah.

3 THE COURT: I'm sure you'll talk it over.

4 MR. LUSTBERG: What we're going to is just substitute  
5 redacted exhibits so that we don't have that problem.

6 THE COURT: Sure. And whatever disputes remain,  
7 we'll deal with.

8 MR. LUSTBERG: Thank you, Judge.

9 THE COURT: Thank you, everyone. We're adjourned.

10 MR. LUSTBERG: 9:00, right?

11 THE COURT: 9:00.

12 (Proceedings conclude 5:15 p.m.)

13 -----

14 I certify that the foregoing is a correct transcript  
15 from the record of proceedings in the above-entitled matter.

16

17

18 /S/Rh  a C. Villanti, CCR, CRCR, RMR

4/18/2023

19 Court Reporter/Transcriber

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